

To the HONOURABLE
SOCIETY
 OF
WRITERS
 TO
His Majesty's Signet.

GENTLEMEN,

THE Design of the ensuing
 Treatise being to illustrate,
 in a methodical Way, the
 Rise and Progress of Heri-
 table Rights, I could not introduce
 it more favourably into the World
 a 2 than

iv DEDICATION.

than under your Protection. An Essay upon the Security and Transmission of Property, the most considerable Branch of your Employment, claims Shelter no where so justly as under your Patronage : And as that useful Subject has been hitherto much neglected, this small Performance, I hope, will meet with your Countenance and Approbation.

NO Pains have been spared to render the Undertaking as complete as a first Essay upon a Theme accompanied with so many puzzling Circumstances can reasonably be expected : And considering the Variety of Matters treated in it, that no one ever went before me, and that I have ventured to methodize a Subject hitherto reckoned incapable of Order, I have Reason to believe you will pardon my
Escapes,

DEDICATION.

Escapes, and judge of the Endeavour
with Clemency and Candour.

I must not however expect to be easily forgiven by some zealous Antiquaries, for the few Innovations I have made bold to introduce in their tedious Way of Writing; having, in as far as I judged it safe to do so, *clipped, cropped, circumcised, the old, obsolete, antiquated, Expressions, Phrases, Circumlocutions*, with which, to the great Reproach of the Profession, our Writings even at this Day so much abound, that by looking into them, one might be apt to date the Existence of a modern Conveyancer a Century or two before he was in Being. Whether it is for the sake of Redundancy, or some secret Incantation these Votaries of Antiquity may imagine there is in the Number *Three*, they

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they seem so extravagantly fond of throwing together preposterously that Number of synonymous Words in almost every Sentence, is a Mystery too sublime for one who is not possessed of the same Cast of Mind with themselves to comprehend. But above all, the numberless Tautologies and multiplied Repetitions, which serve for nothing but to lengthen out their Writings, and rather perplex than illustrate them, are highly intolerable. Yet, so tenacious are these Zealots, that though the manifest Abuses here inveighed against are in the ensuing Tract adjusted with the utmost Lenity and Caution, such necessary Emendations, I am afraid, may be of Weight enough to infuse into their Minds sorry Apprehensions of it, and to inspire them with the Sentiment of a certain judicious Priest about

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about the Dawning of the Reformation, who being reprehended for reading *Mumpsimus* instead of *Sumpsimus*, in the Course of publick Worship, replied, *He had done so these thirty Years past, and was not Fool enough now to leave his old Mumpsimus for their new Sumpsimus.* Be in that what will, I shall not be solicitous about the Matter; since, as for those who have already taken Party with illiberal Cant and Jargon, and are resolved not to be pleased out of their own Way, I as little dread their Censure as court their Applause.

BUT as you, *Gentlemen*, and you only, are my proper Judges, to your better Judgment I submit the following Sheets. If I am so happy as to merit your Approbation, I shall esteem it an ample Reward, and be
proud

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proud to dedicate my self again to
your Service, when-ever I find a Time
and Occasion proper for it.

I am,

GENTLEMEN,

Your most humble Servant,

THE AUTHOR.

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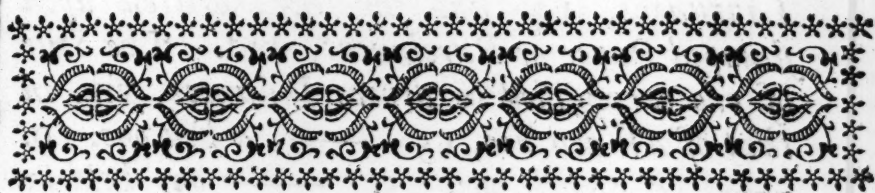
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ERRATA.

Page 27. line 11. for *quacunque*, read *quoecunque*. P. 29. l. 19. for *omnibus*, i. in *omnibus*. P. 37. l. 24. after *capiendi*, add *exhibeatis*. P. 42. l. 22. in the Notes, p. 75. l. 30. and p. 87. l. 20. for *sold*, i. *transferred*. P. 75. l. ult. and p. 87. l. 21. for *sell*, i. *transfer*. P. 88. l. 26. for *Rents*, i. *the Rents*. P. 109. l. 23. for *them*, i. *him*. P. 148. l. 24. for *Subject*, i. *Subjects*. P. 155. l. 24. for *his*, i. *her*. P. 189. l. 20. for *Marriage*, i. *Marriage-settlement*. P. 204. l. 4. for *eorum*, i. *eorum*. P. 215. l. 27. in the Notes, for *designato*, i. *a designato*. P. 269. l. 22. for *proposed*, i. *purposed*.

N. B. To the End of the second Precaution, p. 40. add this one: And for ascertaining the valued Rent of the Lands, the Tax-roll or Cess-books of the Shire of which they make a Part, should also be duly considered.



A
TREATISE
CONCERNING
The Origin and Progress
OF
FEES.

INTRODUCTION.

HERITABLE Rights with us are governed by the Feudal Law, by which a Feu is defined to be, *A free and gratuitous Right to Lands, made to one for Services to be performed by him.* For Feus being granted at first for military Services, without a
A Price,

2 INTRODUCTION.

Price, no one was deemed capable of receiving them that was not fit to assist his Lord in the Wars : Though in process of Time, as Superiors became more intent on Gain, military Offices began to be neglected, and the warlike and martial Nature of Feus, by the Intervention of Money, became tainted of course ; insomuch that Women, furious Persons and Persons under Age, unfit for War, were privileged to acquire them. This Degeneracy was indeed disguised at first under a specious Pretext of the worthy Actions and Achievements of Ancestors, whose sudden Death had barred the Munificence of the Giver, otherwise than, as the Poet hath it, *ut in prolem transcurrat gratia patrum* ; but in later Times it still increased by degrees, and hath at last arisen to such a Height, that at this Day, if I may so express it, we can hardly discern a Feu in a Feu. So that Feus being no longer gratuitous, but having become the Subject of Bargain and Sale, a Feu or Fee (call it which you will) is now with greater Propriety defined to be, *A Right to an immoveable or an incorporeal Subject, granted under certain Conditions, and for the Performance of certain Services, agreed on betwixt the Granter and Receiver of it.*

The main Division of Feus, according to the Feudal Law, is into *proper* and *improper* ; and from these two Sources proceed all the Branches and Subdivisions we find mentioned by the Feudalists. A *proper* or *right* Feu is that granted for Services indefinitely, that is governed by the common and regular Law of Feus, and hath received

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no Alteration by Consuetude or Paction : And an *improper* Feu is that which recedes from the natural and innate Qualities of a Feu, and is stinted or restrained by Pactions, Conditions or Services specially expressed, as for the most part all our Feus now-a-days are.

With us again, Fees are differenced, *1st*, with respect to the Vassal ; and, *2dly*, by the Manner of Holding.

First, with respect to the Vassal, Fees are distinguished into *simple*, *tailzied* and *conjunct* ones. A *simple* Fee is that which is conceived in favour of one and his Heirs whatsoever, without Limitation. A *tailzied* Fee is that whereby the direct Line, either of Descendents or collateral Heirs, is cut off from the Succession, and a Place opened to remoter Successors in their stead. And a *conjunct* Fee is that which is settled on two or more Persons jointly, and their Heirs, or the Heirs of one of them ; as if a Feu were disposed to a Man and his Wife in conjunct Fee and Life-rent, and to their Heirs, or to a Son *nominatim* and his Heirs, in Fee.

Secondly, with relation to the Holding, Feus are divided into *Ward*, *Feu*, *Blench*, *Burgage* and *Mortified* Fees ; of all which hereafter.

Now, this Division of ours does not at all clash with those handed down to us in the Feudal Collections ; but, on the contrary, is illustrated and supported by them, insomuch that there is not one of those Divisions whose Effect does not evidently appear in our Customs ; nay, the Feudal Con-

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stitution and ours, in relation to this Particular, are so far twisted and blended together, that the Difference, I may say, hath almost dwindled into nothing. But then the Feudal Law differs so widely from ours in a multitude of other Things, that, without attempting to run either the Difference or the Parallel betwixt the two any farther, it may be more apposite to our purpose in this Introduction, to betake ourselves to our own Constitution, and to consider briefly the four or five following Preliminaries: *1mo*, Who they are that can regularly grant Feus with us, and who cannot. *2do*, Who can acquire them. *3tio*, What are the proper Subjects of a Feu. *4to*, What are the essential and necessary Requisites of the Feudal Contract. *5to*, How Feus are constituted.

First of all then: As to the Granter, this is a general Rule, That any one vested with an immoveable Subject, either allodially or in Fee, may give it out in Feu, provided he be intrusted with the free Administration of it. Hence it follows, that Pupils, Minors, married Women, and all others wanting a Capacity to adhibite a just Consent, as they are restrained from the free Administration of their own Affairs, so they are likewise deprived of the Faculty I am here speaking of. Married Women however, with the Consent of their Husbands, may very properly feu out their Heritage; though Tutors in behalf of their Pupils, and Minors with the Concurrence of their Curators, are not intitled to the Privilege, except in Cases of urgent Necessity, as when the
Minor's

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Minor's Debts are considerable, and cannot be otherwise satisfied; and even then it is highly necessary that the Indispensableness be ascertained by a Decree of the Judges, after a Trial of the Matter. Minors nevertheless are not disabled from renewing old Investitures, because they may be compelled to do so, and are in no worse Case by the Renewal, if they have not thereby conferred a Right on the Vassal which he had not before: Nay, for that Matter, though a Minor, wanting Curators, should make over a new Feu, the Concession would not be intrinsically void, but subjected only to be rendred so by a Reduction; nor would it even be rescinded, unless the Inequality on his Side were manifest, and of such a particular Character as bewrayed Fraud and Circumvention, or the Levity and Rashness of his Youth.

Prodigals, or Persons of an extravagant Profuseness, who spare nothing, but drive all before them, are in no better Case than Madmen, because their ways of managing are much the same; and therefore they are restrained from Deeds of Alienation, and consequently from the granting of Feus, without the Assent of their Interdictors. But with us no Man is reckoned a Prodigal for squandering his Substance, or spending it lavishly, unless in the first place he be declared so by a Sentence of the Judge.

Since deaf and dumb Persons can hardly be allowed to have a reasonable Knowledge of the Matter transacted, and though they may have
Judg-

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Judgment, yet since it must be owned that it can be but of little Use to them in the Administration of their Affairs, the Authority of Tutelaries or Guardians seems highly necessary to give their Deeds effect.

Factors or Administrators, though they have the Management of their Employer's whole Business, yet they cannot constitute a Feu without a special Commission authorising them to do so; but they may renew an ancient Infeftment without that Specialty.

The Sovereign is so far tied up from alienating the annexed Patrimony of the Crown, that he cannot feu it out without a previous Dissolution in Parliament; and even then it must be done with an Augmentation of the Rental.

How far a Vassal may venture to subfeu his Ward Fee, without rendring it obnoxious to the Penalty of Recognition, see *Stair, B. 2. t. 11. § 13 & 14*. This however we may take for a Rule by the by, That a Subfeu, whereof the Feuduty exceeds the half of the real Rent of the whole, is not disallowed; because the Superiority, or *dominium directum* of the whole Fee, and more than the Profits of the half, are still retained. But then the Circumstance of an Under-vassal, especially in a Feu that owes Ward and Relief, is always the worse the farther he is distant from the prime Superior; since by the Death of the Superiors interjected betwixt him and the Lord Paramount, or original one, he may be shut out from the Revenues of his Feu, perhaps for a

Series

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Series of Minorities together. And this suggests the Reason why we so much aim at getting rid of subaltern Superiors in order to hold of the Crown, the Fountain from which all our Feus have originally flowed.

In the *Second Place*, As to those who can acquire Feus, this is likewise a general Rule, That every one may receive or purchase a Feu that is not prohibited. Now there is not one single Class of Persons worth the naming that comes under the Verge of the Prohibition here meant by, except these three; 1st, Tutors and Curators, who are only cut off from the Privilege in this one Respect, that they cannot acquire Right to any of their Minor's Possessions. 2^{dly}, If there is a Controversy concerning a Feu depending before the Lords of Session, none of their Number, without forfeiting his Office, and rendring himself infamous to the boot, can purchase a Right to it. And 3^{dly}, Furious or fatuous Persons, Persons under Age, Prodigals, &c. under the Tutelage of others, are incapable of acquiring Feus regularly, without the Aid and Accord of their Wardens.

In the *Third Place* then, concerning the proper Subjects of a Feu, These, in short, are Things immoveable; as, Lands, Tenements, Mills, Messuages, Fields, Woods, Gardens, and the like Hereditaments: Or such Things, at least, as being equipollent to Immoveables are esteemed so, I mean Things incorporeal; as, Annualrents, Servitudes, Jurisdictions, Fishings, Pensions, and
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the like. Moveables also, though they cannot be feued out by themselves, yet in so far as they accede to, and have a necessary and immediate Connexion with an immoveable Subject, may very regularly be passed over with it.

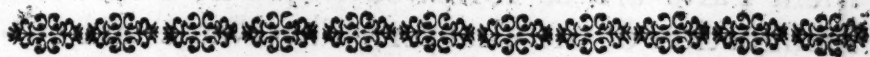
In the *Fourth* Place, the essential and necessary Requisites of the Feudal Contract are these; *1mo*, That the Superiority, or *dominium directum*, remain with the Granter, or Lord of the Fee, at the same time that the Profit, or *dominium utile*, is conveyed to the Receiver. *2do*, That the Vassal hold of the Superior, as having a direct Right in the Fee; and acknowledge his Supremacy by the Prestation of some Fact or Deed specified in the Grant. *3tio*, Fidelity and Homage are always implied in the Feudal Contract, and are Accidents so inseparable from the Character of a Superior, that they cannot be passed from by any Stipulation to the contrary. But though Fealty, or an Oath of Fidelity, be still due, yet by our Custom 'tis seldom or never required.

Lastly, To the Constitution of a Feu there are two Things of absolute Necessity: The one is the present dispositive Act of the Superior, stating the Property of the Fee in the Person of the Vassal, which is done by a *Charter*; And the other is that of Tradition, or the Delivery of symbolical Possession; a Requisite so essential towards the Completion of real Rights, that it cannot be supplied even by a real and natural Possession. This again is called *Sasine*. And the Charter and Sasine jointly

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jointly are termed *Infeudation*, *Infestment*, or *Investiture*.

These two constitutive Acts must be expressed in their specifick Forms of writing; for now that Writ is introduced as an indispensable Solemnity in the Transmission of Rights, a Feu can by no means be constituted without it. To begin then with the former.



TIT. I.

Concerning the first Part of the Investiture, namely, the Charter.

A CHARTER is, *A written Deed, evidencing the Superior to have made over the Fee to his Vassal, and expressing the whole Tenor of the Investiture.*

The Tenor of Charters is variable according to the several Kinds of Infestment, whereof some are original, as when the Fee is at first constituted; and others, taking Rise from a Renewal of the Investiture, are called *Charters*, or *Rights by Progress*: And in both Cases the Charter may be granted, either by the Sovereign, or a Subject Superior.

Charters from the Sovereign are always drawn up in the Chancery, where their *Formula* is well
B known

known already; and for that Reason I shall purposely wave what otherwise might have been here said concerning them. And as to Charters from Subjects on the Renewal of Investitures, I purpose to treat of such, howsoon I have discussed the Bulk of those Writings that give Birth to, and must necessarily precede them: So that in this Place I am to be confined to original Charters by subaltern Superiors, of which sort the constituent Parts are as follows, *viz.* The Name and Designation of the Granter, The Name and Designation of the Receiver, The Cause or Motive inductive of the Feu, The Subject-matter of it, The Holding, The Premium or Reward which the Vassal owes to his Lord, The Date, that is, the Place, Time and Witnesses, where, when, and before whom the Writing is signed and sealed: And these are altogether summ'd up and comprised in the following Clauses, of which the Charter is ordinarily compounded.

1. A *Narrative*, containing chiefly these two Things: 1st, The Names and Designations of the Granter and Receiver, which by the by ought to be very distinctly set forth, so as no manner of Room may be left to doubt of the Persons; because an Error in that respect, or in the Description of the Subject passed over, is such a Vice as admits of no Temperament, but undoes the Grant effectually. 2^{dly}, The special Cause or Incitement leading the Granter into the Alienation, which is sometimes Love and Affection, called a *lucrative Cause*; and at other times, a certain Price,

a yearly Feu-duty, the Performance of Services, the Reward of one's Merit, or the Implement of a previous Contract, and such like Reasons, termed *onerous Causes*. Now though the Narrative ought always to proceed on plain Truth, and to be founded on the Fact itself, yet when this Rule is transgressed, as where the Motive insinuated is not true, the Charter is still good; because a false Narration impeacheth the Granter only, but never can void the Disposition of a Subject Superior.

2. A *dispositive Clause*, in which the first Thing considerable is this, That it regulates and determines the Course of Succession, settling it on the Vassal and his Heirs or Assigns, either with or without Limitation; and nominating or substituting the Heirs one after another, or not, according to the particular Quality of the Fee and Destination of the Parties. The second Thing considerable in this Clause is, the Subject-matter of the Feu, which ought to be described by Marks and Circumstances capable of removing the least Degree of Uncertainty or Error in the Matter. Thus, Lands in the Country should not only be denominated by their common Designation, but pointed out and distinguished by the Parish or Barony, and the Sherifsdome, Stewartry or Regality in which they ly: As Houses within the Limits of a Burgh ought to be described both by the individual Place in which they are situated, and likewise by a particular Bounding; that is, by the several Tenements on the East, West, South, and North Parts thereof. Sometimes there

is but a Part of a Tenement conveyed, and then it is indispensably necessary that that Part be specially characterized; since it is not enough for one to say, that he disposes his Part of such a Tenement, or of such a Parcel of Ground, unless he explains at the same time what his Part is. Upon the whole, The Charter gives Right to nothing that is not, at least, implied in the dispositive Clause, though enumerated in other Parts of the Grant.

3. *Tenendas*, as it is called, that is, a Clause representing of whom, and by what Tenure the Fee is to be held. The Sequel of this Clause, according to the modern Conception of it, is altogether superfluous and unnecessary, being at best but a heap of exegetical and explanatory Words serving to illustrate the Extent of the dispositive Clause.

4. A Clause called *Reddendo*, expressing the Duty that the Vassal owes to his Superior, in return for the Feu. This Duty is various, according to the Nature and particular Character of the Holding, as shall be shewn hereafter.

5. A Clause of *Warrantice*, whereby the Grant-er becomes bound to maintain and make good the Subject disposed, either *absolutely*, that is, at all Hands and against all Men; or *simply*, that is, from his own proper Facts and Deeds solely. And the governing Principle by which the Distinction is determined is this, That an onerous Cause calls for the former, as a gratuitous one, at most, demands but the later. Nay, when the Cause

Cause of granting is either onerous or remuneratory, absolute Warranty is always implied, although it be not so stipulated : As on the other hand, when the Granter reaps no Advantage, neither in present nor in prospect, simple Warranty is only implied, although the contrary should be stipulated: So that the Strength and Effect of this Obligation, in case of Eviction, depends wholly on the Motive inductive of the Grant. Besides the two Kinds of Warrandice already mentioned, there is yet a third sort, called *real Warrandice*, *i. e.* when Feoffment of one Tenement is given in security of another : And this, as well as the other two Species, shall be exemplified in a proper Part.

6. A *Precept of Sasine* ; which is, a Command by the Superior to his Bailie for investing the Vassal with the Fee.

7. A Clause of *Subscription*, mentioning the Date, and the Writer and Witnesses Names and Designations ; agreeably to which the Charter is signed, and ought to have the Seal of the Granter affixed to it at the same time. This Clause establisheth all the rest ; for without it, the Concession is void and of no account.

N. B. The Charters here treated of may bear a Clause of *Registration*, to be registred in the Books of Session, but cannot be recorded in any other Register.

Thus far concerning the several Clauses and Parts of the Charter. There are two Things more

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remaining still to be considered: The one is, Whether Charters ought to be formed in the *Latin* or *English* Languages; and the other, Whether they ought to be written on stamped Paper or Parchment.

As to the *First*, Whether Charters ought to be formed in the *Latin* or *English* Languages: It seems indeed to me a Matter of great Indifferency in which of the two they are drawn up; only there is an old Act of Sederunt, appointing Charters and such other Writings as were in use to be written in *Latin* before the Year 1652, to be continued in the same Language in time coming: And for that, and a few other Reasons besides, I have made choice of the former. As to the *Second*, Whether they ought to be written on stamped Paper or Parchment: Custom hath so far decided the Question, that if a Charter be not extended on the latter, it is at this Day better known by another Name.

Having thus far paved the Way, I come in the next Place to set forth the Stile of the Writings I am here mentioning: And in order to this, allow me to reassume the second Part of the Division of Feus with us, to wit, that which owes its Birth to the various Kinds of Holding. With respect to the Holding it was said, that Fees are branched out into *Ward*, *Feu*, *Blenck*, *Burgage* and *Mortified* ones.

I. A *Ward Fee* is the most proper Feudal Right
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we have, called *servitium militare*, from the Original of Fees, which, as I hinted before, were granted at first for military Service; but that being now little in Use, the grand Effect and Consequence of it is, the Ward and Marriage of the Vassal.

Model of a Charter, making over a Ward Fee to the Vassal and his Heirs simply, and containing Variations suited to the Character of the Holding.

OMNIBUS hanc chartam visuris vel perlecturis, salutem. Vobis notum facio, me A, terrarum & aliorum omnium quæ infra recitantur, dominum, ob multa digna & de me benemerentia officia, in me & meos a B collata, & quo ille in talibus erga nos officiis perstare inducatur, nostro quoque commodo simul prospecto, dedisse, concessisse & disposuisse, & per hanc chartam, illi, heredibus suis & successoribus quibuscunque, in hereditatem, sine reversionis facultate, dare, concedere & disponere, omnia & singula, [*Inferenda hic res dispositæ, sive sint terræ, baronia, domus, fundus, prædium, officium, jurisdictio, aut quodcunque aliud in feudum dari solitum; quæ omnia, ut antea monetur, per certa sua signa & circumstantias, ut omnis dubii & erroris causa tollatur, designanda sunt. Tum sic pergendum,*] cum omni jure & titulo quæ mihi ex his terris, vel earum aliqua parte, competunt, aut in futurum pertinere possunt. Tenenda & habenda autem de me & successoribus meis, per servitium, wardam & relevium, in feudo

do & hereditate in perpetuum (a). *Reddendo* inde nobis, debita & servitia tali tenuræ generi assueta, omnium aliorum onerum aut præstationum loco (b). Quas terras atque alia modo nuncupata,

(a) *The Tenendas, as was formerly observed, is generally enlarged with a Number of exegetical and explanatory Words; which, though they be used rather for Caution than out of Necessity, I have here inserted, as follows: Per omnes suas metas antiquas & divisas, prout in longitudine & latitudine jacent, cum domibus, ædificiis, bolcis, planis, moris, maresiis, viis, semitis, aquis, rivulis, stagnis, pratis, pascuis & pasturis, moleninis, multuris & eorum sequelis, aucupationibus, venationibus, piscationibus, petariis, turbariis, cuniculis, cuniculariis, columbis, columbariis, hortis, pomariis, fabrilibus, brasinis & brueriis, genestis, sylvis, nemoribus & virgultis, lignis, lapicidiis, lapide & calce, cum curiis & earum exitibus, herezeldis, blooduitis, mulierum marchetis, libero introitu & exitu, & omnibus aliis libertatibus, commoditatibus, proficiis, assamentis, ac justis suis pertinentiis quibuscunque, tam non nominatis quam nominatis, tam subtus quam supra terram, procul & prope, ad prædictas terras spectantibus, seu spectare valentibus, quomodolibet in futurum, libere, plenarie, quiete, integre, honorifice, sine aliquo impedimento, revocatione, contradictione aut obstaculo qualicunque.*

(b) *If the Superior hath transacted for a liquid Quota or annual Prestation, in place of the Emoluments and Casualties that otherwise might have accrued to him ex contractu feudali, the Holding is called Taxt-ward; in which case the following, or some such like Clause, should be adjected to the Foot of the Reddenilo: Provisum autem & concordatum est, quod etsi terræ, baroniæ & alia, cum pertinentiis prædisposita, in meas aut successorum meorum manus in posterum devenerint, sive wardæ sive non-introitus ergo, prædicto B suisque licitum erit eadem possidere, redditusque & proficiuas eorundem recipere, quoad in horum alterutro posita sunt statu; pro soluta mihi & meis, quotannis, ad duos anni terminos, festa sciz. Pentecostes & Sti Martini, per æquas partes, pro warda, — monetæ Scotticæ summa; ob non-introitum, & ante & post actionem declaratoriam,*

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cupata, cum pertinentiis, eidem B & suis, contra omnes mortales, & ab omnibus periculis, tueri & defen-

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claratoriam, simili summa; ad cuiusque heredis introitum, tanta; ad cuiusvis heredum maritacionem, quoties occurrer, summa —; & summa — quotannis, pro escheta usufructuaria memorati B aut ejus dictorum, quodocunque ceciderit, durante ejus vita cujus escheta in manus nostras cessura est. Quas casualitates per hanc chartam taxavi, & fixas & certas, ut præfertur, reddidi; etiamque dispono, & successores meos disponere devincio, omnes casualitates wardæ, non-introitus, relevii, maritagii, aut eschetæ usufructuariæ, quotiescunque acciderint, cum omni ex iis proveniente commodo, in gratiam B ejusque supra dictorum, ob solutos hosce liquidatos redditus in eventibus modo recitatis. *This Clause is commonly prolonged with an additional one, to the following purpose:* Idem statutum est, quod, non obstante præsentium tenore, heredi apparenti & successoribus ejusdem B, etsi pro tempore minoribus, licebit, seipsos servitos & retornatos, & postea in terris & aliis præfatis, de me & meis modo præmisso tenendis, infeodatos & fassinos obtinere, cum quo, & omnibus aliis ex tali servitii genere procedentibus commodis, in perpetuum dispensavi.

Although the Casualty of Recognition cannot well be taxed, because it is contrary to the Nature of the Feudal Contract to contain a Clause dispensing with it; yet the Superior may, by a proper Clause, give to his Ward Vassal a direct Power and Faculty to alienate, without incurring any Hazard on that account. Such a Clause, being joined to the former, might be expressed in this Manner: Conventum ulterius & statutum est, quod eidem B & suis, jus suum in terris & aliis memoratis, absque nostro consensu, in cujuscunque gratiam liceat transmittere & vendere, idque vel remissa vel reservata redemptionis facultate; & hunc in finem, omnia scripta & evidencias ad venditionem stabilendam necessaria, concedere: quod ob factum, feudum recognitionis pœnæ obnoxium nullo modo reddetur; quam pœnam, & omnem inde movendam actionem, in æternum remissi. Insuper, meipsum atque meos devincio, illius B heredes & successores, ullumve alium cui feudum hoc alienaverint, vassallos in eodem, modo prædicto tenendo, recepturos, solutis autem

defendere, me meosque devincio atque obstrin-
go (a). Præterea, vobis ——— &

tem semper inde nobis taxatæ wardæ redditionibus & servitiis, in eventibus modo dictis, mihi solvendis.

On the other hand, when the Holding is Ward, simple or taxed, without such a Privilege as that I was just now mentioning, if the Vassal makes over the larger half of the Fee to a singular Successor without the Superior's Consent, the whole Fee reverts to the Superior for ever; and this Casualty takes place ipso jure, without any previous Stipulation: However, as an express Pactio may in some Cases be reckoned a stronger Tie than a mere Statute, the Recognition may likewise be guarded against by a Clause de non alienando; and in that case, instead of the foregoing, you should adjoin the following Clause: Nihilominus statutum & conventum est, quod designato B aut heredibus suis nullo modo vendere, oppignerare aut disponere feudum hoc, vel ejus aliquam partem, ullivis nisi heredi apparenti aliqui successuro, absque meo consensu prius adhibito, liceat; & si contrarium faciant, prædispositum feudum illico ad nos immune & ab omnibus hujus naturæ juribus æque liberum revertetur, ac si nobiscum semper permansisset; & nobis actionem declaratoriam delicti movere & prosequi licitum erit, & dominium utile cum directo dominio, omni habili modo, conjunctum & consolidatum obtinere: hacque omnino sub lege facta & concessa est hæc charta.

(a) *Absolute Warrantice is sometimes expressed in general, and at other times in special Terms, according to the Humour and Inclination of the Writer: And which soever of the Ways it is done, 'tis much the same thing; for as the several Specialities enumerated in the latter are altogether comprehended in the former, the one is to all Intents and Purposes as extensive and effectual as the other. The Stile of the general Warrantice is as above, and that of the special is as follows: — eidem B, & suis quos supra memoravi, ab omnibus wardis, releviis, non introitibus, maritagiiis, eschetis vitalibus, forisfacturis, recognitionibus; disclamationibus, purpresturis, bastardiis, alienationibus prioribus, privatis & publicis infeofamentis, inhibitionibus, interdictionibus, appretiationibus, adjudicationibus, usufructuariis,*

& vestrum cuilibet, Balivis meis in finem post dicendum constitutis, præcipio & impero, quod ex templo, visa hac charta, statum hereditarium, faminam quoque atque possessionem realem, actua- lem & corporalem, designato B conferatis, omni- um & singularum terrarum & aliorum dictorum, sciz. [*Hoc in loco res feudales repetuntur, quamvis haud necessarium videtur.*] Tradendo, vel in suis vel in actornati sui manibus, paucillum terræ & la- pidem de harum terrarum solo desumptum, crepi- taculum & infundibulum molarum, vulgo *Clap* & *Hopper* vocata, & manipulum segetis sive stipulæ, pro terris, pro molis & pro decimis, symbola usi- tata; idque nullo modo omittetur, quod faciendi, vobis Balivis aut vestrum cuilibet, plenam meam do atque committo potestatem. In quorum fidem, huic chartæ (in membranis debite impressis, ma- nu C scriptæ) nomen meum atque sigillum armo- rum apposui, apud Edinburgum, — die —, anno salutis —, testibus C & D.

C testis.

[L. S.] A.

D testis.

II. *Feu* Holding is that Tenure by which the Vassal is bound to pay to the Superior yearly a Sum of Money, or Quantity of Victual and the

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like,

ariis, conjunctis feodis, trientibus sive tertis, reductionibus, nul- litatibus, &, ut verbo dicam, ab omnibus oneribus aut pericu- lis quibuscunque, rueri & defendere, &c.

Simple Warrandice again is of this Form: — eidem B & suis, ab omnibus duntaxat meis factis, in præsentis chartæ præ- judicium, tam præteritis quam futuris, secura reddere & in tuto ponere, memet & meos devinctio atque obstringo.

like, in name of Feu-duty ; as in the following Example, which falls under that Class of Fees called *conjunct* ones.

Charter by a Husband with Consent of his Wife, to a Man and Wife in conjunct Fee and Liferent, and their Son nominatim and his Heirs in Fee, containing Variations adapted to such Cases and Circumstances as are peculiarly incident to this kind of Holding.

OMNIBUS hanc chartam visuris vel audituris, salutem. Notum sit me A, cum uxoris meæ B libero consensu, & me etiam B pro omni meo jure, nosque ambos mutuo cum consensu, pro certa pecuniæ summa a C nobis soluta, & præsertim pro annuo censu infra dicendo, vendidisse, disposuisse, & in feudifirmam elocasse, ut per hanc chartam vendimus, &c. eidem C & sponsæ suæ D in junctum feudum atque usumfructum, quibus mortuis, eorum filio E & heredibus ejus sive cessionariis quibuscunque, in hereditatem, absque retrovendendi pacto, totas & integras terras nostras, [*Terræ & alia in feudum concessa hoc in loco describuntur.*] cum domibus, ædificiis, hortis, pomariis, partibus & pertinentiis earundem, in parochia ——— & vicecomitatu ——— sitas ; una cum omni jure & juris titulo nobis, seu nostrum cuilibet, inde competente (a). Tenendas & habendas has

(a) It is the Vassal's Interest to get Mills and Multures expressly disposed to him along with the Lands, even though there be

has terras atque alia disposita, de me A, heredibus meis & successoribus, in feudifirma five emphyteosi,

no Mill on the Ground at the time; if it were for no other Reason than this, That if the Lands were formerly astricted to the Disposer's Mill, they will be thereby disburdened of the Astriction. But when the Thirlage of the Lands passed over is to be reserved to the Disposer's own Mill, or when these Lands were formerly astricted to the Mill of any neighbouring Heritor, they ought always to be fened out with the Burden of the Servitude; in which Case the dispositive Clause is ordinarily lengthned out with the following Reservation: Reservata nihilominus astrictionis servitute, qua idem C, & alii harum terrarum proprietarii & occupatores, omnia sua grana in eis terris crescentia, ad molam de F molenda, portare, & molituras huic molendino aliaque servitia consueta, solvere, astringuntur: Excipienda sunt autem ab hac astrictione, firmæ emphyteutæ solvendæ, grana decimalia, & ea quæ aut terris serendis, aut equis pascendis seponuntur, in quibus astrictio prænarrata locum non habet.

On the contrary, although it is not doubted but where a Mill is disposed cum molituris solitis & consuetis, without expressing the Lands out of which such Multure is payable, the whole Lands in use of payment are thereby astricted, if they belong to the Disposer, and that the Right of Astriction is thereby conveyed, if they pertain to another Heritor; yet that is not always reckoned enough, unless the Lands be also thirled to the Mill per expressum in the one Case, and the Servitude of Astriction be particularly assigned in the other; as thus, Itidem, assentiente uxore, hæc alias terras meas de — ad molam F dispositam adstrictas reddidi, & in hunc finem harum terrarum colonos omnia sua grana ad eandem molam ut ibi molantur portaturos, & molituras aliaque de more præstanda, soluturos, me, met, heredes meos & successores in futurum devincio; reservatis autem semine, & fruge equis pascendis data, firmisque mihi solvendis in quantum ad aliud molendinum non vehentur, in quibus haud extenditur hæc servitus: Eodem modo, præfato C, sponsæ suæ D, & eorum filio E suisque, servitutem five jus astrictionis in terris de — transfero, qua servitute, harum terrarum proprietarii atque occupatores, grana sua ad molam

teosi, feodo & hereditate in perpetuum, cum omnibus suis juribus, utilitatibus & libertatibus quibuscunque. *Reddito* inde nobis, ab iisdem C & D, &, defunctis illis, eorum filio E suisque, annuo canone five feudifirma post dicendo, nempe, summa — ad duos anni terminos, festa sciz. Pentecostes & Sancti Martini per æquas partes pendenda, priore facta solutione ad festum Pentecostes proxime venturum, pro semestri terminum elapso; similiter quadriginta bollis hordei, & farinæ viginti bollis, duobus modiis & modii dimidio, inter festum Nativitatis & Purificationis quotannis solvendis, prima facta solutione ad festum Purificationis insequens, pro anno præterito; & sic in posterum in partes & ad terminos prædictos solvetur (*a*); & ejusdem feudifirmæ duplum (*b*), ad cujusque heredis five singuli successoris in his terris introitum, ut in hoc tenendi genere

F molenda vehere, & tributa molaria de more persolvere tenentur, secundum astrictionis obligationem hac de re confectam, de dato — una cum obligatione ipsa, & omni inde movenda actione, in quibus locum meum tenebunt dicti cessionarii in posterum.

(*a*) *Add*, vel pro unaquaque hordei bolla, summa — atque pro bolla farinæ, summa — quotquot ex illis in specie non solventur, ut placuerit solventi, *if the Victual is to be converted into Money at a certain Rate, so as to be given in optione solventis, to pay either the ipsa corpora, or the Conversion, as he hath a mind.*

(*b*) Or, & ejusdem feudifirmæ duntaxat pecuniariæ duplum, *if the Casualty of Relief is to be restricted to the Money-Rent alone, as is practicable in a Case like this, where the Feu-duty consists of Money, and of any other Species of Rent besides.*

genere moris est, præstabitur (a), pro omnibus aliis oneribus aut redditionibus, quæ hisce de terris in posterum ullo modo vindicare aut quærere possumus (b). Quas terras & alia superius repetita

(a) *Amidst a great number of other Emoluments and Prestations falling out occasionally in Feu-holding, I shall only mention two: The First is, That of the Marriage of the Heir, which though it be a Casualty appropriated by Law to Ward Fees solely, yet by an express Stipulation it may become due in other Holdings also; and it is no uncommon thing for one to hold his Lands Feu cum maritacione, in which Case the Marriage is generally taxed to a special Sum quoties contigerit. If the Casualty I speak of was to compose a Part of this Reddendo, it might be set forth in this or the like manner: Una cum casualitate ad maritacionem cujusque heredis in has succedentis terras, vel simplice vel duplici quoties occurrerit, debita, cumque aliis omnibus emolumentis & commodis inde provenientibus, quæ & ipsa omnia ad fixam & liquidam monetæ Scotticæ — summam, per hanc chartam taxata sunt quoties occurrant.*

The Second is, That Suit and Attendance which the Vassal sometimes owes to the Court of his Lord, either personally, or by a Proxy, according to Paction; which might be thus expressed: Et etiam cum onere, sectas, vel per seipsos vel substitutos suos, in curiis meis capitalibus a me vel deputatis meis tenendis, ter in anno præstandi, ad manerii locum de — ullumve alium ad locum intra meæ in parochia G jurisdictionis limites situm, quem nobis statuere placebit, & — summam quotiescunque aberint solvendi, pro omnibus aliis oneribus, &c. ut in the-mate.

(b) *When the Superior, being heritably vested with the Tithes, feus out the same jointly with the Stock, he useth to take the Feodatory bound to relieve him of a Share of the Ministers Stipends, and all future Augmentations thereof, in proportion to the Value and Extent of the Tithes passed over. As for Example, in a Case where the Minister is possessed of a modified, but not of an allocated Stipend, this Obligement, taking place immediately after the Reddendo, might be modelled thus: Conven-*
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tita cum pertinentiis, ipse A contra omnes mortales & in quocunque eventu, warrantizare & defendere

tum autem & statutum est, quod prædesignati emphyteutæ, me & meos a præstatione summæ — quotannis parochiæ de F Ministro, & ejus in dicto officio successoribus, pro modificati stipendii portione, ex decimis terrarum dispositis, per hanc chartam ab illis solvi stipulata; & ab omni quoque aucto stipendio in has terras in futurum allocando, immunes reddere & exonerare tenebuntur.

Notwithstanding the Act of Parliament declaring the Feu to be void and reducible, ob non solutum canonem, for two Years together, there is frequently a second Tie laid upon the Vassal, to guard against his Failure in that respect, by an express Proviso in the Charter for that very purpose. If this Proviso were to be adjected to the former, it might be mentioned thus: Conventum quoque & provisum est, & in sasinæ instrumento exinde tradendæ inscribendum, quod si prædictus canon sive redditus feudalis ultra biennium insolutus maneat, eo in casu, præsens hæc infeodatio confestim in commissum cadet, & æque vacua & inanis erit, ac si feudum semper mecum fuisset; atque ex eo tempore, possessionem hujus emphyteuseos resumendi, & ex ea emphyteutas memoratos prout de jure depellendi, mihi jus erit, sub qua lege investitura hæc data simul atque accepta est.

Contrariwise, the Superior sometimes renounceth the Benefit of the legal Irritancy to which he is intitled on that account, reserving only a Privilege to point the Ground, and to affect the Fruits and Revenues thereof, for payment of the Arrears due at the time: And in this Case, in place of the foregoing Clause, you should insert that which follows; Statutum ulterius & concordatum est, quod etiamsi præstationes hæc feudales, ad biennium vel ultra insolutæ maneant, nihilo secius in hoc casu feudum nullo modo amittetur, neque hac de causa, mihi aut meis illud rescindere licebit; non obstante qualicunque lege aut in contrarium praxi, & beneficio statuti in id facti, omnique alia actione inde mihi licita, remisso; nullatenus autem læso jure hypothecæ in iisdem mihi domino superiori competente, sed mihi licebit omnia emphyteutarum bona quæ in hisce sunt terris
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fendere, memet atque meos obligo. Ulterius, quemadmodum sponsa mea B huic venditioni plena voluntate consensit, ita pollicita est, & me ipsum in id obligatum reddo, illam, non solum huic alienationi subscripturam, sed coram iudice ex lege eandem ratificaturam, magno juramento interveniente, sese nullo modo coactam consensum suum adhibere, sed ex proprio motu id fecisse, eaque de causa, neque se, nec ullum alium ejus nomine; hoc factum in posterum, vel directe vel indirecte, oppugnatorios. Insuper, nos A & B, interveniente mutua approbatione, vobis, &c. [*ut in charta præcedente.*]

III. *Blench* Holding is that whereby the Vassal stands bound, out of mere Acknowledgment, to return the Superior an elusory Duty; such as, a Rose, a Penny, or a Pair of Gloves, &c. *nomine albæ firmæ*: And generally with this Qualification;

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on;

distringere, & redditus atque annua earum proficua, ad solvendas mihi debitas redditiones, afficere, eodem modo ac si irritantia hæc non esset disclamata.

Without enumerating other Particulars, I shall content myself with one single Observation more; and it is this, That though the Law acknowledges and gives Effect to all manner of Pactions that are in themselves lawful, and reprobates none but such as are contrary to the Rules of Law or good Manners, amongst which those are chiefly to be reckoned that are subversive of the substantial Parts or necessary Requisites of the Feudal Contract; yet the Consequence of the pactum de non alienando, now and then adjoined to Feud Investments, as it properly belongs to Ward Feus solely, may with a good deal of Reason be called into question.

on, *si petatur tantum*; as may be discerned from the following Instance.

Charter by an Heirefs-woman with Consent of her Husband, in which the Fee, according to a previous Contract, is made over by Entail, and the Heirs limited and tied up to certain Conditions.

OMNIBUS in quorum manus ventura est hæc charta, salutem. *Quemadmodum* per venditionis contractum inter me A, terrarum & aliorum postea scriptorum Dominam, & B sponsum meum ex una parte, atque C ex altera, initum & confectum, datum — & in Concilii & Sessionis libris — die — recordatum, eidem C, & heredibus suis talliatis infra designandis, terras & alia subtus recitanda, vendere & alienare, & in iisdem, modo quo postea narratum, illos investire & sasire, nosmet obstrinximus; *Et quemadmodum* idem C, ad id quod in eo contractu stipulatus erat exsolvendum, summam — nobis dependit, quam in numeratis pecuniis acceptam referimus, & a qua exoneratus habetur: Notum igitur sit, me A, assentiente marito, ut prædictæ stipulationis partes nostras etiam præstemus, vendidisse, alienasse & in perpetuum confirmasse, sicut sub legibus & conditionibus postea dicendis, vendimus, &c. eidem C, in usufructu ad ejus vitam, & eo mortuo, filio suo natu maximo D, atque heredibus ejus masculis; quibus deficientibus, secundo genito E, & heredibus masculis ex ejus corpore procreatis sive procreandis; quibus
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(a) The only considerable Advantages accruing to the superior by a Bench Infestment, arise from the Casualties of Superiority appropriated to that kind of Holding; such as, Non-entry, Relief, and Liferent Escheat: And these are sometimes compounded with the Vassal at a very easy Rate, as thus; — dummodo peratur, & ejusdem monetæ duos denarios, loco relevii ad ejusve hæredis introitum mihi debiti, quam summam omni superveniente tempore, redditum retortum fore statui, una cum simili summa quotannis, quamdiu ante habitam, declarationem

omni alio onere aut præstatione qualicunque; Provisum tamen & statutum est, eidem C, quoad vivit, etiamsi sit in articulo mortis, liberum fore, per se ipsum, non solum hanc infeodationem, ordinem successionis præscriptum mutando, vel talibus clausulis & conditionibus quæ sibi placuerint amplificando, innovare atque invertere, sed etiam debita ad summam usque — contrahere, & feudum cum illo debito onerare, quasi plenum dominium æque ac nudus ususfructus per hunc concessum in sua stetit persona. Similiter statuitur & declaratur, quod nullomodo, præfato D instituto, neque ulli substituto, ullam hujus hereditatis partem vendere, impignorare aut alioqui disponere, seu debita contrahere, ullumve aliud factum perpetrare, quo eadem ab heredibus talliæ successuris, evinci aut adjudicari, aut successionis spes in illa ullo modo frustrari possit, erit licitum; & si contrarium faciant, ordinatum est, primo, facta hæc omnia contraventionis nulla & omnimodo vacua fore, & secundo, contravenientem suosque heredes, jus suum successionis ipso facto amissuros, quod exinde heredi proxime substituto devol-

toriam actionem in hæc terras hæres non introibit, atque ejusdem summæ duplo annuatim, si, post talem declaraturam, introitum non fecerit hæres: Præterea sex asses & octo denarii monetæ prædictæ quotannis pendentur, loco annuo-vitalis eschetæ dicti C & ejus heredum talliatorum, durante ejus vita cujus escheta in manus nostras devolvetur; quam ob summam, dictam casualitatem disponere tenebor, sicuti per hanc chartam, eandem in ejus gratiam qui eschetam suam amitter, vel cujusvis ab eo nominati, quotiescunque talis occurrit eventus, assensiente marito meo, dispono.

devolvetur, cui exemplo post factam contraventionem, actionem ejusdem declaratoriam prosequi liceat, & seipsum in feudum ultimo vestito heredem deservire, omisso contrafaciente, quem nullo modo repræsentare, vel debitis ejus aut obligationibus obnoxius esse tenebitur: Potestatem tamen habebunt, ex hac hereditate, quantum sufficiet debitis, quæ præfatus C virtute facultatis sibi reservatæ contraxerit, solvendis, alienare & vendere, si modo prædictam summam haud excedant. Et etiam ordinatum, quod emphyteutæ feudum possidenti, masculo sive femellæ, maritos suos vel uxores in annuitate vitali — loco trientis sive curialitatis, cui per legem alioqui jus habituri essent, providere liceat; ad quam annuitatem legales hæ provisiones per hanc chartam speciatim limitantur & restringuntur. Ulterius statutum, clausulas hæc irritantes & resolutivas, instrumento fasinæ hinc conficiendo adjiciendas, & omnibus hujus feudi talliati translationibus, retornatibus atque infeofamentis, quum hereditas ab uno herede talliato ad alterum transit, repetendas esse; & talem defectum, contraventionem in deficiente & heredibus suis inducere, ita ut hereditas proximo, per ordinem successionis jamjam præscriptum, substituto deveniat, quem illico actionem delicti declaratoriam prosequi, & jus suum more præfato stabilire velim. Quinetiam nos A & B, alterius factis invicem assentientes, nosmet ipsos, heredes nostros & successores, terras & alia prius nuncupata, eidem C, heredibus suis talliæ & provisionis jam ordinatis, contra omnes mortales & ab omnibus

omnibus periculis, tueri & defendere, junctim & divisim, devincimus. Insuper, quemadmodum præfata A, ex proprio suo motu, nullo compellente, dispositionem hanc concessit, ita pollicita est, atque ipse B in id obstrictus fuit, illam non solum subscripturam, &c. [*sicut in ultima charta.*] Ultimo, ego A, mecum consentiente marito, vobis, &c. [*ut in charta penultima, sasinæ præceptum inferendum.*] In quorum fidem, &c.

To illustrate the foregoing Examples a little further, I present you with that which follows.

Charter by a Factor in name of his Constituent, wherein the Subjects principally and in Warrantice passed over, are supposed to be held by different Tenures.

OMNIBUS, &c. salutem. Notum sit me A, negotiorum curatorem atque mandatarium & delegatum, a B, terrarum, baroniarum & aliorum quæ subtus exprimentur, domino, constitutum, ut testantur procurationis & commissionis literæ, ab eo in gratiam meam conscriptæ, quibus in literis mihi conceditur potestas transigendi, & cum quibuscunque personis, qui rerum in hisce literis inscriptarum feudum acquirere volunt, conveniendi, & in ejusdem B nomine, chartas, dispositiones, atque alia transmissionis scripta, subscribendi, & ut verbo dicam, omnia alia facta eo referencia, quæ idem B ipse præsens fecerit, præstandi, ut in dictis procurationis literis, datis —, & in registris —, — die mensis &c. recordatis, plenius

nus exprimitur; *Quatenus* C & D, curatores E, pupilli sui nomine, summam — mihi, mandatoris mei in usum perfolverint, quam acceptam refero, & de qua liberos & exoneratos in posterum facio : Notum sit, inquam, me A igitur dedisse, alienasse & in perpetuum confirmasse, atque virtute potestatis in hisce procurationis literis mihi commissæ, dare, &c. prænominato E, heredibus suis, sive cessionariis, in hereditatem, sine retrovendendi facultate, totam & integram baroniam de A, singulas villas, terras, molas, piscaturas & alia infra descripta, complectentem, viz. [*Diversæ hæ res in baronia comprehensæ hic sigillatim enumerandæ sunt,*] omnia in parochia — & vicecomitatu — sita ; Et etiam omnes & singulas terras de B in regalitate — fitas, cum domibus, ædificiis & pertinentiis earundem ; salmonum quoque piscatum in locis fluvii C hisce terris conterminis, una cum decimis earum terrarum garbalibus atque vicariis, quæ semper adhuc cum ipsis fructibus consolidatæ fuere, & omni jure & titulo quæ delegator meus B in hisce terris, baronia atque aliis jamjam narratis, vindicare potest : In cujus baroniæ & aliorum modo dispositorum realem warrantizationem, ipse A, juxta tenorem sæpefatæ procurationis, vendidi & disposui, ut per hæc præsentis, sub legibus & conditionibus infra referendis, huic E ejusque prædictis, hereditarie alieno atque dispono, totam & integram baroniam de D, in fenescallatu — positam, cum turre, fortalicio, domo prædiali sive manerii loco, domibus quoque atque ædificiis, hortis, poma-

pomariis, & eorum pertinentiis, ut in præfati B
 investituris plenius describuntur; adeo ut si con-
 tingat terras, baroniam, aut alia primarie disposita,
 five ullam eorum partem, propter defectus in di-
 cti B titulis, vel ob ullum ejus factum eadem af-
 ficiens, evinci, prædictus E & sui, ingressum ad
 baroniam D, evictionis nomine datam, habebunt,
 & possessionem ejusdem, vel saltem partis evictis
 rebus proportionatæ, ex illo tempore ab iis paci-
 fice fruendæ, dum a districtione liberantur, pro-
 sequendi illis jus erit. *Tenendas & habendas, ter-
 ras, baronias, molendina, sylvas, piscaturas, deci-
 mas, patrocinia & alia primarie & in warrantum,*
 ut dictum, prædisposita, de eodem B mandatore
 meo, per servitium, cum warda & relevio, in feu-
 difirma five emhyteosi, & alba firma relative, cum
 omnibus suis juribus, utilitatibus & libertatibus
 quibuscunque. *Redditis* inde memorato B & suis,
 ab E & ejus successoribus, diversis redditionibus
 & servitiis infra exprimendis, sciz. pro baronia A,
 ut dictum complexa, annuo canone postea dicen-
 do, nempe; &c. [*Redditus feudalís, quicumque sit,*
sive argentum sive granum, vel utrumque, & termi-
ni ad quos solvitur, hic inferendus; & tunc adden-
dum,] & ejus redditionis duplo, primo anno in-
 troitus cujusvis heredis, five singuli successoris, in
 hisce terris, ut in hujus tenura generis mos est;
 pro terris de B, cum decimis majoribus atque mi-
 noribus, & salmonum piscatu in locis ejusdem flu-
 vii C, his terris conterminis, libra piperis, super
 terrarum solum, ad festum Pentecostes quotannis,
 nomine albæ firmæ, dummodo petatur; & pro
 terris

terris & baronia D, in evictionis warrantizationem datis, si emphyteutæ, evictis terris primarie venditis, in harum possessionem pervenerint, reddentur servitium, warda & relevium; omnesque alii redditus & præstationes in hoc tenendi genere usitatæ, pro omnibus aliis oneribus aut præstationibus quibuscunque. Provisum autem & concordatum, in fasinæ quoque instrumento virtute hujus chartæ tradendæ cautum erit, quod designatus E in possessionem terrarum quæ in warrantum conceduntur, non ingrediatur, donec hæ originarie dispositæ, aut ex iis aliqua pars, prius abripiantur, ex quo tempore, terras evictionis nomine datas, ad valorem rei ita evictæ, usquedum præfata baronia A & terræ B ab omni onere easdem distringente liberantur, possidere eidem ratum erit; sed his liberatis, terras & baroniam D, cum pertinentiis, in gratiam dicti B, omni habili modo quo de jure, redispone deinceps erit. Præterea, mandatore meum B, heredes suos & successores, obligatos & obstrictos reddo, (nullo modo læsa securitate reali prænuncupata,) terras, baronias, & alia ut dictum alienata, præfato E & suis, contra omnes mortales & ab omni injuria tueri & defendere; baroniam etiam A, & terras de B originarie venditas, ab omnibus inhibitionibus, adjudicationibus, oppignerationibus, annuitatis infeofamentis, & aliis oneribus quibuscumque in præsens afficiuntur, immunes & liberatas reddere, & hunc in finem, syngraphas eorundem exoneratorias, dicto E, ante Pentecostes festum in anno proxime venturo, tradere, sub poena —

ultra præstationem, si omittetur. Porro, memet & successores meos devincio, eundem B, cum in regnum reversus sit, &, si ante redditum factis concesserit, heredes suos propinquiores, præsentem hanc investituram, in omnibus suis capitibus atque articulis, renovaturos, usquedum memoratus E in feudi possessione sese securum ducat. Postremo, ego modo dicto mandatarius, vobis, &c. [*Ut in charta antepenultima præceptum sasinae inscribendum.*] In quorum fidem, &c.

IV. Since *Burgage* Holding denotes that Duty which Burghs-Royal, by their Charters of Erection, owe to the King; and since such Charters are granted by the Sovereign only, and by no Subject Superior, they do not fall within the Verge of my Undertaking in the present Title.

V. *Mortification* is that Tenure, by which the Society, to which the Mortification is made, becomes only bound to return the imaginary Duty of *Preces* & *lacrymæ* instead of all others. Take the following Example.

OMNIBUS hanc chartam visuris vel perlecturis, A sempiternam in Domino exoptat salutem. *Quemadmodum* in literis dispositionis talliatæ, a me, in favorem filii mei B atque aliorum talliæ heredum in illis designatorum, concessis, in quibus terras & alia ibi narrata iisdem transfero, reservavi mihi facultatem ex hisce terris quasdam partes postea dicendas, plenissime vel sub reversione,

sione, ut volui, vendere atque disponere, omniaque alia in his hereditatis partibus agere, æque libere ac si ante alienationem hanc fecissem, ut dispositio hæc talliata, data — , diversas alias complectens clausulas, fusius tenet; *Et quemadmodum facultate reservata in finem & modum infra dicendum uti statui*: Notum sit me igitur dedisse, concessisse & perpetuo confirmasse, & hac præfente charta, sub legibus & conditionibus subtrus inferendis, dare, &c. C, Ecclesiæ G Pastori, & D, E & F, ejusdem Ecclesiæ Presbyteris sive Senioribus, & illorum in hisce officiis in dicta Ecclesia successoribus, societatis infra scribendæ fideicommissariis & fiduciariis, totum & integrum annum redditum sive annuitatem sexaginta bollarum hordei, & viginti bollarum farinæ, ad mensuram vicecomitatus — , inter Nativitatis & Purificationis festa pendendum (prima facta solutione inter festum Nativitatis in anno — , & Purificationis in anno sequente, pro proventu anni — , & sic in posterum continuandum) ex terris & aliis recitandis capiendum, viz. [*Hoc in loco terræ, &c. enumeratæ & descriptæ fuere,*] sive ex ulla eorum parte, aut ex eorundem redditibus & vectigalibus paratioribus. *Tenendum & habendum de me in pura eleemosyna & ad manum mortuam, in feudo & hereditate in perpetuum, cum omnibus suis juribus, privilegiis & utilitatibus quibuscunque.* *Redditis* inde mihi, heredibus meis & successoribus, precibus & lachrymis sive suffragiis solummodo, pro omnibus aliis oneribus aut redditionibus quibuscunque. Statutum est nihilo-

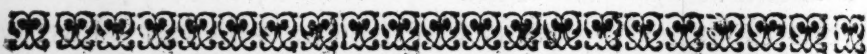
minus, prædictos fiduciarios, suosque in eodem officio successores, in præscriptorum sive legum postea dictarum observantiam in posterum teneri : nempe, Primo, eundem Pastorem C coram iudice ordinario apparere velim, & juramentum suum de fideli hujus donationis administratione præstare, & postea idem juramentum cæteris custodibus adhibere ; quinetiam omnes ministerio in dicta ecclesia in posterum fungentes, simul ac ad curam accesserint, idem juramentum modo prædicto exigere & præstare, obstrictos facio. Secundo, ordinatum est, quod solummodo beneficio hujus donationis mortificatæ fruantur illi, qui tenentes aut coloni & servitores in parochia H aliquando fuerint, & nullus qui sibi victum parare potest, ullum titulum huic dono vindicare queat. Tertio, mihi quoad vixero jus patrocinii & beneficiarios nominandi reservavi, quod, cum fatis cesserò, hisce custodibus assignavi & transtuli, quibus præcipue commendatum velim, ut omnia pia charitatis acta prospera esse optant, ne ullos hoc beneficium lucrari sinant, nisi quorum conditio & character modo descriptis exacte respondet, & inter illos hos præsertim eligant inopes & pauperes, qui familias aliquando habentes, in prospera fuere conditione, sed quorum res divinæ providentiæ cursu, non sua culpa, defecere. Quarto, quod ad ipsam annuitatem spectat, administratoribus licitum fore vel ipsam in specie, vel illa vendita, ipsius pretium, ad eorum libitum distribuere declaratur ; & hi tutelarii in quantum unicuique distribuent haud limitantur, sed rem donatam prout dictabit prudentia partiri

partiri licebit; solummodo ex iis quæro, ut horum inopiæ, in quos confertur hæc charitas, rationem habeant, & tanta unicuique allocetur portio ejusdem, prout recipientium diversi necessitatis gradus majorem aut minorem postulant partem. Quinto, hoc donationis syngraphum in Concilii & Sessionis libris recordari, & ejusdem duo exemplaria ex hisce libris desumi, alterum a me, & alterum cum fasina hujus donationis conficienda, a fideicommissariis ad officium confirmandum in posterum servandum, statuo. Quem annum redditum, & terras ex quibus defunitur, ipse A, ad tenorem qualitatibus in prædicta talliæ concessione insertæ, meipsum & heredes meos talliatos tueri & defendere, &c. devincio. Postremo, vobis, &c. impero & mando, quod sine mora, visa hac charta, statum hereditarium & fasinam, præfato C Pastori, & D, E & F, Ecclesiæ prædictæ de G Senioribus, in nuncupatæ societatis usum, totius & integri memorati annui redditus, &c. quotannis, ad præfixum terminum, ex terris & aliis recitatis, vel ex eorum ulla parte, sive ex censibus, proficuis aut proventibus eorundem paratioribus capiendi, tradendo illis vel eorum procuratori, præsentium latori, &c. sub legibus autem & conditionibus superius expressis, quæ pro repetitis habentur; idque nullo modo omittendum. In cujus rei testimonium, &c.

Thus far concerning the first Part of the Investiture, namely, the *Charter*: I should now proceed to treat of the second, to wit, the *Safine*,
did

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did not my designed Method oblige me to shift it off to a more proper Place. It is however in the mean time to be observed, that the Property of the Fee is always understood to remain with the Superior, till such time as the Vassal hath completed his Right by Infeftment; because no personal Right, such as a bare Charter without a Sasine, ever can defeat a real one: And therefore, before the transmission is so realized, any Obligation, which would have affected the Subject in the Superior's Hands by a proper Diligence, may be made by the like Diligence to reach it in the Vassal's also.



T I T. II.

Concerning the Transmission of heritable Rights by voluntary Deeds of Alienation.

THE Fee being stated in the Person of the Vassal by Charter and Sasine, it may be transmitted and handed down either to universal or singular Successors.

The Transmission of Rights to universal Successors is termed *Succession*; for the Knowledge whereof the Reader is referred to the Institutes of our Law.

Rights are conveyed to singular Successors, either

ther by voluntary Deeds of Alienation, by the legal Diligence of Creditors, or by Confiscation. But it is the first of these Ways only that falls under our View at this time, the other two being quite foreign to the present Purpose.

By a voluntary Deed of Alienation then is meant a Disposition, which is, *A Writ of Conveyance, making over the real Right of Lands or other immoveable Subjects, from one called the Author or Disposer, to another termed the Disponee or singular Successor, and such like Names.*

Dispositions are twofold, *irredeemable and absolute, or redeemable.* Of the first kind is that just now described; and by the second sort I understand those *whereby any real Right is made over for a Time, so as to be redeemed by the Disposer on the Performance of certain Conditions, such as Repayment of the Money for which the Conveyance was made.* But these temporary Rights being better known by the Name of *Contracts of Wadset*, I purpose to treat of them in the following Title; where I shall likewise take occasion to discourse of mutual Dispositions, or those that go by the Name of *Contracts of Excambion.* In the mean time I proceed to set forth the Writings by which Fees are progressively transferred from one to another, when the Transference is both single and absolute, and nowise necessary, but voluntary, on the part of the Granter.

It may however seem proper, before I enter on this Subject, to introduce a few Preliminaries, touching some necessary Precautions, concerning which

which the Purchaser would do well to satisfy himself before the Transaction is committed to Writing. The Particulars I have just now under Consideration are these : 1^{mo}, He ought to be well assured of the Disposer's Title to the Lands or other Heritage about to be sold ; that he hath a continued Tract of Sasines standing in his own and his Authors Persons for a Course of forty Years, with the Charters, Dispositions, Precepts or other Warrants of the Sasines which compose his Title. 2^{do}, For a full Discovery of the State of the Acquisition, with respect to the real Burdens or Intanglements with which it may be incumbered, not only ought the Register of Sasines, but those of Hornings, Inhibitions, Interdictions, Interruptions and Adjudications to be thoroughly searched and pry'd into. 3^{tio}, The Purchaser should know of whom and by what Manner the Lands are held : Whether of the King, or a Subject ; and whether by a Ward, simple or taxed ; a Feu, either *cum maritacione*, or with Irritancies in case the Feu-duty is not timeously paid ; or by a Blench Tenure. 4^{to}, He should also know which Way the Disposer hath Right to the Tithes, whether by an heritable Right, or by Tacks only ; and how far the Tithes are burdened with Ministers Stipends, &c. and if the Minister of the Parish is completely provided in terms of the Act of Parliament. 5^{to}, He should further inform himself, if the Lands are racked, and set for more than the Tenants are well able to pay ;
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and for what Space of Time their Tacks are to continue.

The Buyer having satisfied himself with respect to these and the like Precautions, the Seller, in the next Place, grants the Disposition; which commonly contains the following Clauses: 1^{mo}, A Narrative. 2^{do}, A dispositive Clause. 3^{tio}, An Obligation to infect. 4^{to}, A Procuratory of Resignation. 5^{to}, A Clause of absolute Warrandice. 6^{to}, An Obligation to relieve the Purchaser of all Arrears of Cess and other publick Duties. 7^{mo}, An Assignment to the Writs and Evidences, and likewise to the Revenues and annual Profits of the Acquisition. 8^{vo}, A Clause setting forth the Delivery of the Writings assigned. 9^{no}, A Precept of Sasine. 10^{mo}, The Clauses of Registration and Subscription. All which may be expressed in the following Manner.

Model of a Disposition of Lands, containing Variations adapted to such Cases and Circumstances as most commonly occur.

BE IT KNOWN to all Men, That I A, heritable Proprietor of the Lands and others after mentioned, In consideration of the Sum of ten thousand Pounds Sterling instantly paid in to me by B, whereot I hereby discharge him, his Heirs and Executors, for now and ever (a), Have sold
F and

(a) The only thing considerable in the Narrative, besides the Names and Designations of the Granter and Receiver, is the
Reasons

and disposed, as I at this present sell and dispoſe, to the ſaid B, his Heirs or Assignies whatſoever, abſolutely and irredeemably, all and whole [*Here the Lands, &c. ought to be deſcribed after the ſame Manner they are denominated in the antecedent Infeſtments,*] together with all Right and Intereſt that I, my Heirs and Succeſſors, either have or anywiſe can claim or pretend thereto, or to any Part thereof, in time coming (a). In the which

Reason or Motive inductive of the Diſpoſition; which is variously repreſented, according to the Nature of the Cauſe. Thus, if the Conveyance is made for a certain and determinate Price, the Narrative may be expreſſed as above; if in implement of a previous Contract, it may be ſet forth after this manner:

— In regard that by the Contract and Articles of Sale, betwixt B and me on the one and other Parts, of Date —, I became bound to tranſmit and make over to him, his Heirs or Assigns, the Lands and others hereafter enumerated, and to infeſt and ſeiſe him in the ſame, in Manner therein and after expreſſed; *And in regard that the ſaid B hath, in implement of his Part of the above ſaid Contract, made payment to me of the Sum of ten thouſand Pounds Sterling; whereof I hereby diſcharge him, his Heirs and Executors, for now and ever: Be it known, I ſay, That, for theſe Reaſons, I have ſold and diſpoſed, and at this preſent, in implement alſo of my Part of the forementioned Contract, ſell, &c. And if the Motive is nowiſe onerous, but merely on the ſcore of Liberality and Affection, called a lucrative Cauſe, the Narrative may be implied in theſe Words: — For the Love and Eſteem which I have and carry towards B, and for divers other Reaſons inducing me to do ſo, Have ſold and diſpoſed, &c.*

At many other times the Narrative runs in a Strain quite different from either of theſe; however, the two or three Samples I have given may ſerve for a Specimen of the reſt, and may ſtill be further illuſtrated by the Examples to be met with in the Sequel of this Title.

(a) With reſpect to the diſpoſitive Clause, I had occaſion formerly

which Lands and others above disposed, I bind and oblige my self and mine aforesaid, to infest and seise the said B and his above named, upon their own proper Charges and Expences, heritably and irredeemably; and that by two several Infestments and Manners of Holding; the one whereof to be holden of me, my Heirs and Successors, in free Blench, for payment of a Penny Scots Money in name of Blench-farm, at the Term of *Whitsunday* yearly, provided the same be required; and for relieving us, at the Hands of the Superiors of the forementioned Lands and Estate, of the Duties and Services payable to them forth of the same: and the other of these Infestments to be holden from me and mine aforesaid, of my said Superiors, by the same Tenure that I presently hold of them my self (a). And for obtaining the

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merly to make some Remarks upon the like Clause of an original Charter; to which the Reader is referred.

(a) The Obligation to infest is divers ways expressed, according to the particular Character of the Holding, or Design of the Parties. For example: When the Tenure is Ward, simple or taxed; yea supposing it to be Feu, if there is a Condition de non alienando in the prime Investiture, the Clause of Infestment is in this Form: In the which Lands and others above denominated, I bind and oblige my self and mine aforesaid to infest and seise the said B, &c. and that by Resignation thereof in the Hands of my immediate Superiors of the same, to be holden after the Form and Tenure that I presently hold or might have holden of them my self. But if the Holding is of any other sort, Burgage only excepted, the Obligant should always be bound to give Infestment of both kinds, to wit, a me, and de me; unless it is conditioned, That the Party Receiver is to hold of the Disposer, called a base Holding, or a Right de me; and then the Obligation must be adapted to that peculiar

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the above said Infestment by Resignation, I make and constitute _____ and each of them, jointly and severally, my very lawful and irrevocable Procurators, for me, and in my Name, to resign and surrender, as I at this present resign, give up and surrender, all and whole [*In this Place the Lands, &c. are repeated,*] together with all Right and Interest that I, my Heirs and Successors, either have or anywise can claim or pretend thereto, or to any Part thereof, in time coming, *In the Hands* of my immediate Superior or Superiors of the same, presently being, or that shall happen to be for the time, or of his or their Commissioners having Power to receive Resignations in his or their Names; *In favour* and for new Infestment thereof to be reassigned to the said B, his Heirs or Assignies, absolutely and irredeemably, in due and competent Form (a): And thereupon, Acts, Instruments and Documents to call for and receive, and generally, to do every

liar Case, as shall be shewn hereafter. *In the mean time it may be observed, that when the Subjects transmitted are held by different Tenures, this Clause of the Conveyance may be easily modelled out of a Composition of the two Patterns already prescribed; however, it shall be exemplified in a proper Place.*

(a) Procuratories of Resignation in favorem are for the most part of a fixed Stile, and there is hardly a Case to be met with in ordinary Occurrences that will work any remarkable Change in the Matter of their Form. If there is any Circumstance at all worth the mentioning, it seems to be this, That when the Disposition is granted on Terms, the Qualifications are generally enumerated in this Part of the Procuratory, as may be discerned from sundry Instances both in this and the sequent Titles, so that I need not here anticipate a Thing that will afterwards appear more plainly.

very other thing, in relation to that Affair, that I might do my self if I were present, which I shall hold firm and stable without Revocation. Which Lands and others above designed, with the Pertinents, I the said *A* bind and oblige my self and mine aforesaid, to warrant and maintain to the said *B* and his above named, at all Hands and in every Event whatsoever (*a*): And also, to extricate

(*a*) *Absolute Warrantice*, as was observed elsewhere, is sometimes expressed in general, and at other times in special Terms, according to the Humour and Inclination of the Writer. The Stile of the former is as above, and that of the latter is as follows: — to warrant and maintain to the said *B* and his above named, against all and singular Wards, Reliefs, Non-entries, Mariages, Liferent Escheats, Forfeitures, Recognitions, Disclamations, Purprestures, Bastardies, former Alienations, private and publick Infeftments, Inhibitions, Interdictions, Apprisings, Adjudications, Liferent Rights, conjunct Fees, Ladies Tercés, Reductions, Nullities, and generally, from all other Burdens and Intanglements whatever, at all Hands and against all Men. When the Purchaser pays an equal Price for Stock and Teind jointly, he useth to get absolute Warrantice for the one as well as the other; but otherwise, as the Rights of Tithes are often exceeding dark, and have their Origin in very lame Titles, the Seller is only bound to warrant them from Fact and Deed, that is, That he hath neither done, nor shall do any thing prejudicial to the Alienation. Simple Warrantice, or that which is implied in Deeds of pure Donation, is of this Form: — to warrant and secure to the said *B* and his above named, against all Facts and Deeds to be done by me at any time hereafter in prejudice thereof.

If there are any standing Tacks at the time of the Sale, they should not only be excepted from the Warrantice, but assigned to the Purchaser. The Exception I speak of takes place immediately after the Clause of Warranty, and is thus expressed: Excepting always from the present Warrantice all such Tacks and Affedations as are just now standing betwixt me and the Tenants and

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cate and disengage the same of all Feu, Blench and Tithe Duties, Supplies, Taxations, Ministers Stipends, Schoolmasters Salaries, and of all other publick Burdens wherewith they shall be incumbred at the Term of — next to come, being the Period of Time at which the said B his Entry doth commence (a). Further, I make and
con-

Possessors of the forementioned Lands, in so far as they may seem to infer a Contravention of the above written Obligation; without prejudice nevertheless to the said B, to quarrel and reduce the same on any competent Ground in Law, that does not operate an Action of Recourse against me for the Warrantice thereof. *And the Assignment is generally coupled together with that to the Rents and Duties; of which hereafter.*

(a) *The Obligation of Relief is sometimes backed with an additional one to the following purpose: And for that end, I likewise oblige my self and mine aforesaid, to deliver up to the said B sufficient Acquittances and Discharges of all these publick Duties, against the — Day of — in the ensuing Year, One thousand seven hundred and thirty four.*

In the Case of a Baron disposing a Part of his Barony, or where the Lands passed over pay a certain Feu-duty and valued Rent in conjunction with the Disposer's other Estate, without being specially valued, 'tis proper that this Clause should have another adjected to it, ascertaining the Proportion of these Duties to be paid by the Purchaser for the time to come; as thus: And whereas the Lands of C hereby disposed, and the Lands of D still remaining with me, [the Seller] pay to the Superior the Sum of — in name of Feu-duty yearly; and being both thrown together in the Cess-books, and valued at the rate of —, they pay Cess and other publick Burdens accordingly: In order, therefore, to ascertain and commensurate the Proportion of these Duties of which we are reciprocally to relieve one another for the time to come, it is covenanted, That, as the Rent of the above said Lands of C amounts

constitute the said B and his above named, my Cessionaries and Assignies, in and to all and singular Charters, Dispositions, Retours, Precepts and Instruments of Sasine, Procuratories and Instruments of Resignation, and all other Writings and Securities whatever, granted to me, my Predecessors or Authors, with relation to the Subject-matter of the present Right and Disposition, or any Part thereof (a); with all that has followed or may follow thereon; and in like manner, in and to the Rents, Revenues and Casualties of the before mentioned Lands, of the Crop and Year of God —, and in all time thereafter, with all Action and Pursuit anywise competent to me for

mounts exactly to one third Part of that of the forementioned Lands of D, the said B and I shall be holden and obliged, as we at this present interchangeably oblige our selves, our Heirs and Successors, to free and relieve each other of such a Share of the Feu-duries, Taxations, and all other publick Burdens whatever, wherewith our several Lands stand jointly affected, as shall tantamount and be answerable to their respective Values, according to the Estimate and Computation already mentioned: That is to say, the said B is to satisfy the one third, and I the said A the remaining two third Parts of all these real Incumbrances in time coming.

(a) *When the Progress of Infeftments is but of a small Extent, the Evidences may be particularized and specially assigned, by subjoining to the general Clause such another as that which follows: —* Particularly, in and to a Disposition of the above mentioned Subjects granted by C to D, of Date —, with the Charter of Resignation and Instrument of Sasine following thereon; and also, another Disposition of the same by the said D to me, bearing date —, with the Instrument of Sasine ensuing thereon, and Charter of Confirmation thereof, and all that hath followed, &c. as in the Text.

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for the same (a); *Surrogating* and *substituting* the said B, in my full Right and Place of the Premises for ever: With Power to him and his aforesaid, to intromit with and uplift, and, if necessary, to use all manner of legal Diligence for obtaining Payment of the Rents and Duties above assigned; to remove and put in Tenants, and do every other thing in relation thereunto, or towards the Recovery of the Evidences and Securities before written, that I might have done myself before the granting of this Assignment: Which Assignment I bind and oblige my self and mine aforesaid to warrant in the following Manner, namely, in so far as it concerns the Writs and Evidences, at all Hands and against all Men, and in so far as it relates to the other Subjects above mentioned, from my own Facts and Deeds done or to be done in prejudice thereof. *Moreover*, I have

(a) *This Part of the Assignment is sometimes enlarged by a Complication of divers other Subjects that may occasionally be joined to those which it commonly contains. The Particulars I aim at are, Tacks, Burial-places, Seats in Churches and the like, which are transferred in this manner: — Besides, I transmit and make over to the said B and his aforesaid, the whole Tacks and Locations of the above said Estate standing betwixt me and the present Tenants and Possessors thereof, and that for all the Years and Terms they have to run after the Commencement of his Possession above prefixed; with the Tack-duties, Penalties and other Emoluments accruing therefrom, and all Suit and Execution competent to me towards the Recovery thereof: At the same time, I assign and transfer to the said B my Burial-place in the Church-yard of C, with the Seat [or Loft] belonging to me in that Church, hereby engaging my self to enter him to the Possession of both, how soon soever I shall be desired so to do; surrogating, &c.*

Furthermore, I desire and require you, ———

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Lands,

(a) But if the Writings assigned contain any other Subjects besides these passed over, the Seller is not in safety to deliver them up, as they are the Evidences of his own as well as of the Buyer's Right; and therefore, in that case, the following or some such like Obligement is generally put in place of the Clause of Delivery: Moreover, in regard that the Rights and Securities above assigned are all that I have for instructing my Title to a considerable Part of my remaining Estate, I judge it necessary to retain them in my own Custody, and not to deliver them up at this time: For which Reason I oblige my self and mine aforesaid, to make out for the said B authentick Transcripts thereof, at least of so many of them as shall amount to a clear and evident Progress, according as their Number stands ascertained by an Inventory subscribed by him and me on the Day of the Date hereof; and also to make the original Writings so to be transcribed, forthcoming to the said B and his above named, on all Occasions when they shall have necessarily to do therewith, upon condition that they be holden to return the same within a certain short Space of Time after that at which they shall be called for.

Lands, the Claps and Hoppers of the Mills, and an Handfull of Grasse and Corn in place of the Tithes, &c. as the Custom is in such like Cases, conform to this Disposition and the Infestment to follow thereon, or either of them; and that this on no account ye leave undone: The which to do I commit to you, jointly and severally, full Power, by this my Precept (a). And I consent to the Registration hereof in the Books of Council and Session, or of any other competent Judicature, therein to remain for Preservation; and if need be, to have the Strength of a Decree of any of the Judges interponed thereto, that Letters of Horning and all other Execution necessary may be directed thereupon, constituting

_____ my Procurators for that effect. [*Follows the Clause of Subscription, setting forth the Date, and*

(a) One should always know by what Tenure the Lands are held, before he ventures to insert a Precept of Sasine; because, when the Holding is Ward, simple or taxed, or even when it is Feu, if there is a pactum de non alienando in the original Infestments, the making use of such a Precept, before the Superior gives his Consent to the Sale, may come to have a worse Consequence than some Conveyancers are well aware of. However, where Part of the Lands is held either of these Ways, and another Part by a different Tenure, there is nothing to hinder this last Part from being inserted in the Precept; and if it is doubtful which are the Ward and which the Feu or Blench, they may be altogether inserted for that matter, if you'll only adject the following Clause to the Foot of the Precept: — Reserving always such Parts of the forementioned Lands and Estate, as by the Charters and other Writings of Investiture thereof appear to be holden either by a Ward or Tax-ward Tenure; upon which Condition the said B is appointed to take Infestment, and no otherwise.

and the Writer and Witnesses Names and Designations, in common Form.]

Besides the Variety arising from the particular Circumstances mentioned in the Notes, there is still a farther Diversity occasioned in the Stile of Dispositions, on account of the State and Quality, *1mo*, of the Disponer; *2do*, of the Purchaser; *3tio*, of the Subject disposed. And though these three Topicks might be severally treated of in the following Sections, yet, in order to reduce the Number of Examples to as small a Compass as possible, I shall in some measure set forth the Variety attending the last of them in the Specimens adduced for Illustration of the two former Heads. And *First* :

S E C T. I.

Of the Diversity occasioned in the Stile of Dispositions, on account of the State and Quality of the Disponer.

With respect to the Disponer, Dispositions are made either by single Persons, or by Societies and Incorporations.

A single Person may grant the Right for himself, or he may do it for, or with the Consent of another; as when a Factor, having a special Commission for that purpose, disposes for his Constituent; or when a Husband with Consent of his

Wife, or a Wife with Consent of her Husband, transmit their Heritage.

1. The Granter being a single Person acting for himself, may either dispoise as heritable Proprietor of the Subject transmitted, as in the foregoing Example; or as apparent and presumptive Heir only to his Predecessor: And in that case the Stile of the Disposition is still the same, with these Differences: 1^{mo}, The Disposer, instead of the superadded Designation of *heritable Proprietor of the Lands and others after mentioned*, is particularly denominated by the Degree of Alliance which he bears to the Person who was last invested with the Fee of the Tenement. 2^{do}, The Obligation to invest, in the Case I am here mentioning, is conceived in the following Manner: —

And in regard that the Property of the forementioned Inheritance is not as yet actually vested in my Person by Investment, I have therefore become bound and obliged, on my own Expences, to procure my self served and retoured as Heir in special to my said deceased Father, or to any other of my Predecessors who was last invested with the Fee thereof, and as such, to obtain my self invest and seised in the same; and being thus invested, I likewise oblige my self, my Heirs and Successors, to invest and seise the said B and his above named, on their own Expences, in the Lands, Barony and others above disposed, and that by two several Investments, &c. 3^{tio}, The Procuracy for resigning is generally interwoven with another for serving the Disposer Heir to his Predecessor, in this Manner: — *And for these Ends and Pur-*
poses,

poses, I hereby make and constitute, &c. to purchase Brieves forth of his Majesty's Chancery, for obtaining me served and retoured Heir in special to my said deceased Father, or to any other of my Predecessors who died last vest and seised in the Fee of the above said Estate; to proclaim the Brieves, expedite the Service, and return the same to the Chancery, and afterwards to raise Precepts and all other Writings necessary for infesting me accordingly; to pass the Infestments, registrate the Sasines, and do every other thing in relation to that Affair, that I might do my self if I were present: And my Title being so established, I likewise authorise and empower my forenamed Procurators, jointly and severally, as was said, to resign and surrender, as I at this present, now as then, and then as now, resign, &c. And so you proceed as if the Fee were actually stated in the Disposer's Person by an Infestment.

2. Dispositions by Factors, or those to whom the Management of a special Business is committed, are very rare and uncommon; however, for Institution's sake, I give you the following Specimen.

Disposition of Tithes by a Factor in name of his Constituent.

K NOW ALL MEN, That I A, Factor and Commissioner specially constitute by B, Patron of the Parish-Church of —, and Titular of the Tithes both parsonage and vicarage of that Parish; In respect of a Factory or Commission granted

granted by him to me, whereby I am authorised and impowered to transact and agree with any Person or Persons willing to purchase the Subjects therein and partly after mentioned, and in his Name to subscribe Dispositions and other Conveyances thereof, and to do every other thing in relation to a Sale of the same, that the said B might do himself if he were present, as in the above said Factory, dated ———, and registred ———, more fully is implied; *And in respect* of the Sum of ——— instantly paid in to me by C, whereof I hereby discharge him, his Heirs and Executors, for now and ever: *Have* sold and disposed, and at this present, in pursuance of the Faculty with which I am endowed by the forementioned Factory, sell and dispoise to the said C, and the Heirs succeeding to him in the Lands and Estate under written, which failing, to his Heirs or Assignies whatsoever, heritably and irredeemably, all and whole the parsonage and vicarage Tithes of the said C, his Lands and others hereafter enumerated, namely, [*Here the Lands were named and designed,*] together with all Right and Interest that the said B, his Heirs and Successors, either have or any-wise can claim or pretend thereto, or to any Part thereof, in time coming. In the which Tithes, both parsonage and vicarage, above disposed, I bind and oblige the said B and his aforesaid, to invest and seise the said C and his above named, heritably and irredeemably, in due and competent Form; and that by two several Investments
and

and Manner of Holdings; the one whereof to be holden of my said Constituent, his Heirs and Successors, in free Blench, for payment, &c. and for relieving them at the Hands of the Minister of ———; and his Successors in Office, in all time coming, of the modified and allocated Proportion of Stipend payable to them in Manner after mentioned; and the other of these Infeftments to be holden from him and his aforesaid, of his immediate Superior of the before mentioned Tithes, the same Way and as freely in all respects as he presently holds the same himself. And for accomplishing the aforesaid Infeftment by Resignation, I the said A, in virtue of the Power and Faculty assigned to me in Manner above expressed; make and constitute ——— ——— ——— and each of them, jointly and severally, the said B his very lawful and irrevocable Procurators, for him, and me as his Commissioner, and in our Names to resign and surrender, as I at this present, in Agreeableness to the Factory above rehearsed, resign, give up and surrender, all and whole the parsonage and vicarage Tithes of the said C his Lands and others above denominated, together with all Right, &c. *In the Hands* of my said Constituent, his immediate Superior thereof, presently being or that shall happen to be for the time, or of his Commissioner having Power to receive Resignations on his behalf; *In favour*, and for new Infeftment of the same to be made and granted to the said C, and the Heirs succeeding to him in the Lands and Estate above mentioned, which

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which failing, to his Heirs or Assigns whatsoever, heritably and irredeemably, in due and competent Form : Providing always, as it is hereby expressly provided and declared, That the said *C* and his aforesaid shall be holden and obliged to relieve the said *B* and his above named at the Hands of the Minister of —, and his Successors in Office from time to time, of the Sum of — yearly, as the modified and allocated Proportion of Stipend presently payable to the Minister of that Parish forth of the Tithes above mentioned, and likewise of all future Augmentations of the above said Stipend with which these Tithes may be burdened at any time hereafter; and thereupon, Acts, &c. Moreover, I the said *A*, in consequence of my Commission, bind and oblige the said *B* my Constituent, and his above named, to warrant and maintain this Disposition, with the Subject-matter thereof and Infeittments ensuing thereon, against their own proper Facts and Deeds done or to be done in prejudice thereof. Furthermore, I engage my self to cause my forenamed Constituent, on his Return to the Kingdom, and in case of his Decease, his Heirs and Representatives, to ratify and renew the present Alienation, and enlarge the same with such other Clauses and Expressions as shall be thought necessary, until such time as the said *C* shall reckon himself sufficiently secured of this his Acquisition. And lastly, I desire and require you — — — and each of you, jointly and severally, the said *B*, and I as his Commissioner, our Bailies

lies in that Part specially constitute, That, on Sight hereof, ye pass, and deliver to the said C heritable State and Sasine, &c. of the parsonage and vicarage Tithes of all and singular the Lands and others above described, by delivering to him, &c. a Handfull of Grass and Corn, as the only Symbol of Possession requisite in the present Case; but always under the Qualification and Condition above expressed, which is hereby holden as repeated: And that this on no account ye leave undone, &c. *Registration, &c.*

To diversify this kind of Conveyances a little farther, I present you with that which follows.

Disposition by the Commissioners appointed by Act of Parliament to enquire after the forfeited Estates in Scotland, in favour of a Person who had purchased one of these Estates at a publick Sale.

K NOW ALL MEN, That we, A, B and C, Trustees and Commissioners appointed for the Sale of forfeited Estates in Scotland, Considering, that in pursuance of the Acts of Parliament made in that behalf, the Estate after mentioned, which pertained to D late Earl of E, attainted, being by us put to publick Sale by way of Auction, it was, on the — Day of —, — Years, purchased by F, as the highest Offerer for the same; And considering, that in consequence of the Acquest, and pursuant to the Directions of the above said Acts of Parliament, we the fore-
H named

named Trustees, by a Minute of the Sale signed by us and the said *F*, did certify and declare, first of all, *That* the Particulars purchased by him were as follows, *viz.* all and whole the Earldom of *E*, comprehending the Lands, Lordships, Baronies and others under written, namely, [*Here the Particulars were severally enumerated and described; and then this general Clause followed,*] with the Castles, Towers, Fortalices, Yards, Orchyards, Parks, Inclosures, Mills, Mill-lands, Coals, Coal-heughs, Mines, Minerals, Forests, Woods, Salmond and other Fishings, Jurisdiction of Baronies, Power of Pit and Gallows, and whole other Liberties and Privileges belonging thereto; as also, the yearly Fairs and weekly Markets thereof, and all the Customs and Emoluments accruing therefrom; together with all other Lands, Tenements, Messuages, Seigniories, Superiorities and Hereditaments pertaining to the said *D* before his Attainder, and vested in us the above named Trustees for the Use of the Publick; together also with the Arrears or Rests of Rents, Feu-duties, Customs and Casualties of whatever sort, remaining in the Hands of the Tenants, Feuers and Possessors of the above said Estate, of the Crop and Year of God One thousand seven hundred and twenty six, and all preceeding Years. *Moreover*, we certified and declared, *That* the Particulars before mentioned were to be absolutely disengaged of all Arrears of Quit-rents, Feu-duties, Chiefries and other publick Incumbrances affecting the same at the Term of *Whitsunday* then ensuing, being

being the Period from which the said *F* his Possession was appointed to commence : *That* they were however to be subjected to the Payment of one thousand Pounds *Sterling per annum* to *G*, the Wife of the said *D* late Earl of *E*, during her Lifetime, in terms of her Marriage-settlement and his Majesty's Grant under the Great Seal concerning the same : *That* they were also to be subjected to such Stipends as being then allocated on the Estate, became due for the Crop One thousand seven hundred and twenty seven, and in all time thereafter, as well as of such other additional Stipends as should either be augmented to the old ones, or allotted to the Parsons of the Parishes lately erected within any Part of the Boundaries of the forementioned Earldom : *That* the said *F* was to be fully intitled to the Reversions of all the real Rights and Securities with which the Estate was incumbered at the time of his Predecessor's Attainder; and at the same time, that he behoved to fulfil the Obligations on the part of the Reverser before he could challenge that Faculty : *That* the heritable Offices of Keepers and Constables of his Majesty's Houses, Palaces or Castles in *Scotland*, and all the Lands, Fees and Casualties thereto belonging ; as also, the Right of Patronage of Churches, Universities, Colleges or Schools, were not comprehended, nor should be construed to be included in the Sale, but should belong to the Sovereign and his Successors, conform to the Act *quinto Georgii*, intituled, *Act for enlarging the Time for determining*

Claims on the forfeited Estates : That how soon the said *F* should give up to us proper Certificates of the Payment of the Purchase-money after specified, we should be holden to execute an Indenture, or Contract of Bargain and Sale, in his favour, in Manner herein implied. *On the other hand*, the said *F* accepted of the Acquisition on the Terms above mentioned, and engaged himself over and above, to make payment to his Majesty's General Receiver for *Scotland*, or his Deputies, for the time, of the Sum of thirty thousand Pounds *Sterling*, and that at the Term of *Martinmas* then next to come, under the penal Sum of six thousand Pounds Money foresaid, in case of Failure, with the Interest or Use-money of the the principal Sum so long as the same should remain unpaid after the Term of Payment above expressed : As the Minute of Sale here mentioned, bearing date — , more largely sets forth. *And now* that he hath accordingly delivered up to us proper Certificates of the Payment of the above said Sum and Interest due thereon, whereof we hereby acquit him, his Heirs and Executors, for now and ever ; *Know all Men*, we say, That on these Considerations, we the said *A*, *B* and *C*, have sold and disposed, and at this present, under the Qualifications and Provisions before related, sell, alienate and dispose, to the said *F*, his Heirs or Assignies whatsoever, heritably and irredeemably, all and whole the Earldom of *E*, comprehending the several Lands, Lordships, Baronies and others above and after specified, namely,

namely, [*In this Place the Particulars being again enumerated, were seconded with the general Clause mentioned in the Narration.*] Which Lands and others above denominated are to be held in the following Manner, to wit, such of them as the late Proprietor held of the Crown, are to be held of the Sovereign and his Successors in free Blench, for payment of a Penny *Scots* Money at the Feast of *Whitsunday* yearly, on condition that the same is required; and such of them as were held of subaltern Superiors, are still to be holden of their respective Superiors, by the same Tenure, and as freely in all Respects as the said *D* held of them himself. And for that end we hereby make and constitute, &c. to resign and surrender, as we at this present, under the Qualifications and Conditions above rehearsed, resign, &c. all and singular the Lands, Earldom, Lordships, Baronies and others above disposed, which are altogether holden as repeated and expressed, *In the Hands* of the respective Superiors of the same, or of their Commissioners having Power to receive Resignations on their behalf; *In favour*, and for new Infeftment thereof to be granted back again to the said *F*, his Heirs or Assigns whatsoever, heritably and irredeemably, in due and competent Form: And thereupon, Acts, &c. *Furthermore*, we engage our selves, that the said *F* shall hold and enjoy the before mentioned Estate entirely quit of all Arrears of Crown-rents, Feu-duties and Chiefries affecting the same at any time preceeding the Term of his Entry above expressed; and likewise

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likewise of any Breach of Trust that can be pretended to have been committed by us the fore-named Trustees, in not strictly performing the Duties of our Office. *Registration, &c.*

3. As to Dispositions by Husbands with Consent of their Wives : Where the Wife is provided to a Liferent of the Lands that are sold, she should not only, according to the present Practice, give her Consent to the Alienation, and to all the Clauses and Obligements relative to the Infestment ; but she, as well as the Husband, for her particular Right and Interest in the Subject, should be made to dispoⁿe exp^ressly, and to grant all the real Clauses of the Disposition in conjunction with him. The Husband also, in order to to maintain the Conveyance against a future Reduction on the head of Force and Fear, ought to be brought under an Obligation to cause the Wife ratify the Deed judicially ; and that done, the Ratification becomes an effectual Bar to any such Reduction, even though the Woman has been induced, through the Importunity of the Husband, to go into his Measures by joining him in the Sale. Dispositions of this Denomination having nothing else in them peculiar to themselves, I need only throw together some short Sketches of the most important Clauses of such a Conveyance, whereby it will be no difficult Matter to form an Idea of the rest, without a farther Directory.

Short

*Short Draught of a Disposition by a Husband with
Consent of his Wife.*

BE IT KNOWN to all Men, *That I A*, heritable Proprietor, &c. with the special Advice and Consent of *B* my Spouse for her Interest, and that *I* the said *B* for my self, for all Right of Liferent, Annuity, Tēce, or any other Right or Title whatever, that *I* either have or anywise can challenge to the Lands and others after mentioned, or to any Part thereof, and that we both with the reciprocal Assent of one another; *In consideration* of the Sum of ——— instantly paid in to us by *C*, whereof we hereby acquit him, his Heirs and Executors, for now and ever: *Have* sold and disposed, as we at this present, for our respective Rights and Interests, sell, &c. In the which Lands and others above disposed, we the said *A* and *B*, with the interchangeable Approbation of each another, engage our selves, our Heirs and Successors, to infeft and seise, &c. and that by two several Infeftments and Manner of Holdings, in due and competent Form; the one whereof to be holden of me the said *A*, and mine aforesaid, in free Blench, for payment, &c. And for effectuating the above said Infeftment by Resignation, we, with the joint Accord of one another, make and constitute, &c. to resign and surrender, as we at this present, for our specifick Concerns therein, resign, &c. Which Lands and others above designed, with the Pertinents,

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tinents, I the said *A* bind and oblige my self, my Heirs and Successors, to warrant, &c.. *Further*, I make and constitute the said *C* and his above named my Cessionaries and Assignies, in and to all and singular Charters, &c. *Furthermore*, as the said *B* hath voluntarily consented to the present Alienation, so she hath promised, and I engage my self, that she shall not only subscribe, but also appear before the Judge-ordinary, and, in my Absence, judicially ratify the same, declaring on Oath that she was not compelled to concur with me in the Sale, but did it freely and of her own Accord; and therefore, that neither she nor no other Person in her behalf shall ever quarrel or impugn the Disposition, directly or indirectly, in time coming. *And lastly*, we the said *A* and *B*, with one Consent, desire and require you, &c. [*Precept of Sasine in common Form.*] Registration, &c.

But where the Subjects transmitted belong to the Wife in Property and Heritage, she is all along considered as the Party chiefly concerned; and the Husband, as a Curator only in the case, is no further interested than in joining his Concurrence to her's throughout the several Clauses of the Conveyance. The Purchaser however would do well to get a better Security for the Warranty of his Right, than the Wife's own personal Obligation; because, although the Disposition is unquestionably good, such an Obligation is absolutely void in itself; and the Husband's

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Consent, backed with the Wife's Oath of Ratification, never can remove the Nullity, nor give Strength to an Obligation which the Law hath utterly disabled her from granting. I say, in the Transmission of Lands pertaining to a Wife, she is all along considered as the Party chiefly concerned, as appears by the following Example:

Disposition by an Heiress-woman with Consent of her Husband, by which the Fee is passed over in favour of the Superior.

BE IT KNOWN to all Men, That I *A*, heritable Proprietress of the Lands and others after mentioned, with the special Advice and Approbation of *B* my Husband, for his Interest; In respect of the Sum of two thousand Pounds Sterling presently paid in to us by *C*, Superior of the above said Lands, whereof we hereby discharge him, his Heirs and Executors, for now and ever; Have sold and disposed, as I at this present, with the Advice and Approbation above mentioned, sell, alienate and dispone, to the said *C*, and the Heirs of Tailzie and Provision succeeding to him in the Lands and Estate of *D*, heritably and irredeemably, all and whole these my Lands of —, with the Houses, Biggings, Parts, Pendsicles and Pertinents thereof, all lying in the Parish of —, and Sheriffdom of —, together with the parsonage and vicarage Tithes of the same, which have hitherto been consolidated with the Stock, and never as yet separated there-
from

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from, and all Right, &c. And that I the said *A* may be absolutely divested of the Property of the Fee of the before mentioned Subjects, I hereby make and constitute, &c. to resign and surrender, as I at this present, with the unanimous Assent of my forenamed Husband, resign, give up and surrender, all and whole the above said Lands of ———, with the Houses, &c. lying in Manner above expressed, together with the parsonage and vicarage Tithes of the same, which have hitherto been consolidated with the Stock, and never as yet separated therefrom, and all Right, &c. *In the Hands*, and in favour of the said *C*, and the Heirs of Tailzie and Provision succeeding to him in the Lands and Estate of *D*, *ad perpetuam remanentiam*; to the effect that my Right of Property being consolidated in his Person with his own Right of Superiority, the Lands and others above resigned may remain and abide with him and his above named, absolutely and irredeemably, in all time coming: And thereupon, Acts, &c. Which Lands and others before designed, with the Pertinents, we the said *A* and *B*, with one Accord, bind and oblige our selves, jointly and severally, our Heirs and Successors, to warrant, &c. as also, to rid and disburden the same of all Feu, Blench and Tithe Duties, &c. Moreover, as the said *A* hath voluntarily granted the present Alienation, so she hath promised, and I the said *B* engage my self, that she shall not only subscribe, &c. [*as in the foregoing Precedent.*] Registration, &c.

N. B.

N. B. In a Case like this, where a Vassal resigns the Feu to his Superior, an Instrument of Resignation *ad remanentiam*, regularly performed and duly registred, completes the Alienation effectually : For the Superior needs not be infeft of new, because he is always understood to be invested with the Subject, as well as the Vassal. And this insinuates the Reason why these two grand Clauses, *the Obligement to infeft* and *Precept of Sasine*, are omitted in the Draught.

There is but one Way whereby the real Estate of a Pupil can be voluntarily passed over, and that is, by a Decree of Sale pronounced by the Lords of Session, in consequence of a Process carried on by the Tutors for that very Purpose. In this Process the Pupil's Creditors and nearest of Kin are called, to see it found and declared, That there is a Necessity for selling the whole or some Part of the Estate for payment of the Debts : And if the Sale is found necessary, the Lords appoint a Day on which the Lands are to be exposed to publick Roup, and adjudge them to pertain to the highest Offerer, in the same Manner that is practised in the Sale of a Bankrupt's Estate.

And it were not amiss, though the very same Formality was observed in setting over the heritable Estate of a Minor ; who, in many Cases, is intitled to Restitution against a Sale *sine decreto*, as well as a Pupil, albeit the Deeds of the one are not so easily reduced as those of the other.

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However, though this Order is absolutely necessary in the case of Pupillarity, it is no uncommon Thing for a Minor, with Consent of his Curators, to sell off his Lands directly, without so much Precaution. I give you therefore the following Instance.

Disposition by a Minor with Consent of his Curators, making over the Superiority in favour of the Vassal.

BE IT KNOWN to all Men, *That I A*, Superior of the Lands and others under written, with the special Advice and Consent of ——— my Curators, for their Interest; *Seeing B*, heritable Proprietor of these Lands, hath made payment [*The Price must not be paid in to the Minor himself, because that would infer Iniquity, but to one of the Curators, or their Factor, thus,*] to *C*, one of the Number of my forenamed Curators, on my behalf, of the Sum of two thousand Pounds *Sterling*, whereof he is hereby exonerated for now and ever: *Have* sold and disposed, as I at this present, with the Advice and Consent above mentioned, sell, &c. to the said *B*, his Heirs or Assignies whatsoever, absolutely and irredeemably, all and whole the Lands and others hereafter denominated, namely, ——— with the Houses, &c. lying, &c. in the Fee whereof the said *B* stands presently vest and seised, holding the same of me as his immediate Superior thereof; together with all Right and Title whatever, whether of Property or Superiority, that I
my

my Authors or Predecessors, either have or any-
 wise can claim to the same, or to any Part thereof
 in time coming, In the which Lands and others
 above disposed, I the said *A*, with the unanimous
 Assent of my forenamed Curators, engage myself,
 my Heirs and Successors to infest and seise, &c.
 and that by a single Infestment only, to be hold-
 en of the Sovereign and his Royal Successors, by
 the same Tenure, and as freely in all Respects as
 I presently hold, or might have holden of him my
 self. And for expediting the above said Infest-
 ment by Resignation, I hereby make and consti-
 tute, &c. to resign and surrender, as I at this pre-
 sent, with the joint Accord of my Curators, re-
 sign, &c. *In the Hands* of our Sovereign Lord the
 King, or his Royal Successors, my immediate
 Superior for the time, or of his or their Commis-
 sioners having Power to receive Resignations on
 their Behalf; *In favour*, &c. Which Lands and
 others above resigned, in so far as concerns the
 Superiority or *dominium directum* thereof, I the
 said *A*, with Concurrence of my Curators, bind
 and oblige my self and mine aforesaid, to war-
 rant, &c. *Farther*, I hereby assign and make o-
 ver to the said *B* and his above named, the whole
 Charters, Retours, Infestments, and other Wri-
 tings of whatever Nature, conceived in my fa-
 vour with relation to the Subject-matter of the
 present Deed of Alienation, and all that hath fol-
 lowed or may follow thereon. *In like manner*, I
 renounce and give over in his favour, the Feu-
 duties, and other Prestations specified in the *Red-*
dendo

dendo of his Investiture, concerning the Fee of the Lands and Estate before mentioned; and that for all the Years and Terms hitherto remaining unpaid, as well as in time coming: *Surrogating* and *substituting* the said *B* and his above named in my full Right and Place of the Premises for ever. *Moreover*, I have herewith delivered up to the said *B* the Rights and Securities above assigned, according to an Inventory thereof subscribed by me and my Curators at the signing hereof; to be kept and used by him and his aforesaid as their own proper Evidences for the time to come. *Furthermore*, we the forenamed Curators engage our selves to cause the said *A* (the Minor,) and in case of his Decease, his Heirs and Representatives, after their Age of twenty one Years complete, ratify and approve, and if need be, renew the present Disposition in all the Clauses and Articles thereof, till such time as the said *B* shall reckon himself sufficiently secured in this his Acquisition. *Finally*, I the said *A*, with the Consent above written, desire and require you [*Precept of Seisin*] Registration, &c.

In relation to Dispositions of this Character, the Footing on which the Curators stand ought always to be considered: Because when several Curators are named jointly, they must all concur in the Sale to make it subsist; but when they are named indefinitely, it is sufficient that the major Part concur. If they are named jointly and severally, any one of them may authorize the Deed; and if so many of them are appointed a

Quorum,

Quorum, that specifick Number, at least, must do it: But if one or more of these Consenters be named *sine quo*, or *sine quibus non*, then he or they, with the major Part of the remaining Curators, are always accounted a Quorum, unless it is otherwise decreed by the Writ of Election. That one may not mistake himself in a Matter of so much Concern, he should not take it on trust, but see to the Nomination himself.

4. Of Dispositions by Societies or Bodies polittick, the chief are these by the Magistrates of a Burgh in name of the Community; for a Specimen of which kind I present you with the following Model.

Disposition by the Magistrates of a Burgh in behalf of the Community, by which the Right is supposed to be held of the Granters.

K NOW ALL MEN, That we *A* Provost of the Burgh of *B*, — — — — — Bailies, *C* Dean of Gild and *D* Treasurer, with the rest of the Council, Deacons of Crafts, ordinary and extraordinary, of the said Burgh, for our selves and as representing the whole Body and Community thereof; *In as much as E* hath now and formerly advanced and paid in to our forenamed Treasurer, towards the Management of a certain Business visibly tending to the Benefit of the Society, the Sum of three thousand Pounds Sterling, whereof we hereby discharge him, his Heirs and Executors for now and ever: *Have*
fold

sold and disposed, and at this present sell and dis-
 pone to the said *E*, his Heirs or Assignies, heri-
 tably and irredeemably, all and whole these our
 Lands of ——— with Houses, &c. lying, &c. and
 bounded in the following manner, to wit, [*The*
Lands were farther described by a particular Bound-
ing;] as also, the Salmond-fishing on these
 Parts of the Water of *F*, adjacent to and border-
 ing on the said Lands, with all Right, &c. Re-
 serving nevertheless the Servitude of Astriction
 and Thirlage of the Lands above denominated
 to the Mill of *G*, to which it is hereby declared,
 That the said *E*, and the other Heritors and Pos-
 sessors of the above said Lands from time to time,
 shall be holden to carry the whole Grain and Pro-
 duct thereof, and get the same grinded there in
 all time hereafter; and to pay Multure or Tri-
 bute, and other Gratuities accompanying the
 Thirlage, according to Use and Wont. *Farther*,
 we bind and oblige our selves and our Successors
 in Office, to invest and seise the said *E*, and his
 above named, in the Lands and others above dis-
 posed, on their own proper Charges and Expens-
 ces, absolutely and irredeemably, in due and
 competent Form; and that by a single Investment
 only, to be holden of us and our Successors a-
 foresaid in Feu-farm and Heritage, for payment
 of the yearly Feu-duty after specified, namely,
 [*Insert the Feu-duty whatever it is, whether Victual*
or Money, or both; and the Terms of Payment there-
of; then say,] together with the like Feu-duty,
 over and above the yearly *Reddendo*, every Year

an Heir or singular Successor shall enter to the Lands, as is customary in this kind of Holding; and that for all other Duties or Prestations whatsoever, which we or our above said Successors can anywise ask or challenge forth of the before mentioned Subjects in all time coming. It is provided however and enacted, That if the forementioned Feu-duty shall at any time hereafter continue resting for the Space of two whole Years together, so as no Part thereof shall be paid at the last Term of Payment for the second Year, the present Deed of Alienation, and the Infeftment ensuing thereon, shall forthwith fall to the Ground, and become utterly void and extinct, in the same manner as if the Fee had still remained with us; and from that time forward, it shall be allowable for us and our aforesaid, to reassume the Possession of the Feu, and expel the said *E* and his above named therefrom *prout de jure*: With the Burden of which Irritancy the Investiture is granted and accepted, and no otherwise. *Moreover*, we engage our selves and our Successors in Office from time to time, to warrant and maintain the Lands, Fishing and others before rehearsed, to be good and sufficient to the said *E* and his above named, at all Hands and in every Event whatsoever. *Furthermore*, we for our selves, and as representing the remanent Members of the Community of the said Burgh, desire and require you, &c. [*Precept of Sasine.*] Registration, &c.

Thus much concerning the first Thing proposed,

pounded, to wit, the Diversity occasioned in the Stile of Dispositions, on account of the State and Quality of the Disponer.

S E C T. II.

Dispositions distinguished with respect to the Receiver.

THE Form of such Conveyances is also various with respect to the Receiver, who sometimes acquires the Right for himself, and at other times officiates in the Name and for the Behoof of another. When the Receiver or Purchaser acquires for himself, he settles the Succession on his Heirs or Assigns, either with or without Limitation; and nominates or substitutes the Heirs one after another, or not, according to his own Destination. In the one Case the Fee is said to be *simple*, as in the other it is said to be *tailzied*. Simple Fees have been set forth in divers Instances already; and tailzied ones remain still to be considered.

A *Tailzie* then, according to the common Acceptation of the Word, signifies, *A written Deed, passing over an Estate to several Persons or Lines, appointed to succeed one after another, according to the Priority or Remoteness of the Place which they bear in the Substitution; and withal, diverting the Course of Succession from the natural and common Channel in which it would have otherwise run.* As when Lands are provided to one and the Heirs of

of his Body, or to his Heirs-male, or his Heirs of such a Marriage, or to his eldest Heir-female; which failing, to another Person named, and his Heirs of such a kind; which failing, to a third Person and his Heirs of a certain Denomination; and so forth, to a fourth, &c. as the Disposer thinks fit to make the Tailzie long or short.

It were out of the Road at this time to say any thing in relation to the Nature and obligatory Force of Tailzies, or to the Clauses and Proviso's that may occasionally be adjected to them; because the Knowledge of these Things does not properly belong to the practical Part of the Law: And for that Reason I shall here confine my self to the bare Form of the Writing, which I shall set forth in an Example, wherein these Terms that seem to be most common and ordinary shall be pointed out. The Example I am to mention contains the Settlement of an Inheritance in the Person of an universal Successor, and is as follows.

A Deed of Entail.

K NOW ALL MEN, *That* I *A*, heritable Proprietor of the Lands, Lordship, Baronies, and others under written, *For the Continuance* of my Inheritance with my own Children and Posterity, and for divers other Reasons and Considerations inducing me to do so; *Have* sold and disposed, as I at this present, under the Reservations and Conditions after mentioned, sell and

dispone to *B* my Son, and the Heirs whatsoever procreated of his Body ; which failing, to my other Heirs of Tailzie and Provision after specified, heritably and irredeemably, all and whole the Lordship and Barony of *C*, comprehending the several Lands, Mills, Woods, Fishings, Tithes, Patronages, Burghs of Barony, Jurisdictions, and others afterwards rehearsed, to wit, [*Here the Particulars were enumerated,*] all lying in the Shire of —, and pertaining to me in Property ; *And also*, all and whole the Lands and Barony of *D*, with the Tower, Fortalice, Manour-places, Houses, Biggings, Yards, Orchards, Parts, Pendicles and Pertinents thereof, lying in the Earldom of —, and pertaining heritably to *E* and *F*, who hold the same of me their immediate Superior thereof, in Feu and Blench Farms respectively, for payment of the Duties specified in the *Reddendo* of their respective Investitures concerning the same ; *Again*, all and whole the Lands of *G*, with the Houses, &c. lying in the Parish of —, and Regality of —, with the Fee whereof *H* stands presently invested, holding the same of me by Service, Ward and Relief, for performance of the Duties and Services appropriated to that kind of Holding ; together with all Right, &c. In the which Lands, Lordship, Barony and others above disposed, I bind and oblige my self and my Heirs, as well male, as of Line, Tailzie, Conquest or Provision, and all others my Successors whatsoever, jointly and severally, renouncing the Benefit of the Order of

discuf-

discussing them, under the Limitations and 'Conditions after specified, to infest and seise the said *B* and his above named, which failing, my other Heirs of Tailzie and Provision after mentioned, heritably and irredeemably; and that in the following Manner, namely, In the Lordship and Barony of *G*, which I hold Taxt-ward of the Crown, and likewise in the Superiority of the above said Lands of *G*, by Resignation thereof to my respective Superiors of the same in Manner hereafter expressed; and in the Lands and Barony of *D*, pertaining heritably to the Persons above named, and holden by them of me in Feu and Blench Farms respectively, by two several Infestments, &c. [*forma communi.*] And for accomplishing the forementioned Infestments by Resignation, I the said *A* hereby make and constitute, &c. to resign and surrender, as I at this present resign, &c. all and singular the Lands, Lordship, Barony, Superiorities, Mills, Woods, Fishings, Tithes, Patronages, Burghs of Barony, Jurisdictions and others particularly and generally above enumerated, which are altogether holden as repeated and again expressed; together with all Right, &c. *In the Hands, &c. In favour* and for new Infestment thereof to be made and granted to the said *B* my Son, and the Heirs whatsoever of his Body; which failing, to any other Heir-male procreated of my Body, and the Heirs whatsoever procreated of his Body; which failing, to the Heirs whatsoever procreated of my Body, and the Heirs whatsoever procreated of their

their Bodies, the eldest Daughter or Heir-female of the said *B* the Institute, and of all the Substitutes throughout the whole Tailzie, having still the Pre-eminence, and succeeding without Division; which failing, to *C*, eldest Son of *D* my Brother-german, and the Heir-male of his Body; which failing, to *E*, second Son to the said *D*, and the Heir-male of his Body; which failing, to the Heir-male to be procreated of the said *D* his Body, by the present or any subsequent Marriage, and the Heir-male of that Heir's Body; which failing, to the eldest Daughter or Heir-female procreated of the said *D* his Body by the present or any after Marriage, and the Heir-male of her Body; which failing, to the eldest Daughter or Heir-female of the particular Heir appointed to succeed on the Failure of the Descendents of my own Body, and the Heirs whatsoever of her Body; and failing of all these, to any Person or Persons that shall be nominated and called to the Succession by a Writing under my Hand at any time hereafter; and in case of no such Nomination, to my own nearest Heirs or Assignies whatsoever, absolutely and irredeemably, in due and competent Form: *Reserving* always to me the said *A*, my Liferent Right of the Manour-place, Office-houses, Gardens and Orchards of the above said Lordship and Barony of *C*, as the same are presently possessed by my self; as also, of these Parts and Portions of the forementioned Lordship hereafter particularized, namely, [*Insert the Particulars.*] *In like manner, reserving*

ving to C my Spouse the Liferent of such of the Subjects above resigned as are provided to her by our Marriage-settlement, and by an additional Bond of Provision in her favour in the case of her Survivance. *Reserving likewise* to me a Power and Faculty, at any time in my Life, *& etiam in articulo mortis*, not only to alter and change this present Deed of Entail, by inverting the Course of Succession thereby prescribed, after any Shape or Fashion I shall think fit; but also to sell, wadset, or otherwise dispose upon the Subject-matter thereof, either in whole or in part, as I have a mind; and, in a word, to do every other thing with relation to the Usage and Disposal of it, that I might have done before the granting hereof. *Further*, it is provided and decreed, *That* the said B, and the other Heirs of Entail above written, shall be holden to fulfil all the Obligations I stand bound to perform at the time of my Decease, and to satisfy the Debts, both personal and real, resting by me at that time; particularly, the Provisions of my younger Children, in terms of the several Bonds of Provision of this Day's Date made to them concerning the same: *That* in case the Right of Succession shall at any time after this fall to the female Heirs, the eldest Female shall always succeed without Division, and exclude her Sisters from being Heirs-portioners with her; and she, and the Husband whom she shall marry, or to whom she is then married, and their Heirs, at least, the Heir who is to succeed to the above said Estate, shall be holden from that time forward

ward to assume the Sirname of *A*, if they were formerly called by another Name, and to bear the Arms of that Family in all time thereafter: *That* it shall at no rate be allowable for the said *B*, nor any of the Substitutes, to sell off or dispose upon any Part of the Inheritance, nor to contract Debt, or do any other Deed whereby it may be adjudged or evicted from the succeeding Members, or their Hopes of Succession thereto in any measure evaded: And if they do in the contrary, it is declared, in the *first* Place, That the Deeds of Contravention shall be absolutely void and null, and of no manner of Strength or Effect whatsoever; and in the *second* Place, That the Contraveener and the Descendents of his Body shall, *ipso facto*, forfeit the Benefit of the Succession, to which they are called by the present Settlement, and the same shall forthwith accresce to the Heir next in the Substitution, who, immediately on the back of the Contravention, may commence a Declarator thereof, and serve Heir to the Person who died last invested with the Estate, passing by the Contraveener, without representing him, or being anywise liable to fulfil his Obligations. *Nevertheless*, it is not disallowable for them, even to alienate so much of the before mentioned Hereditaments as shall be necessary to satisfy the Debts resting by me at the time of my Decease; provided they do not exceed the Boundaries of the Privilege here given them in the Exercise of that Faculty. And at the same time it is declared, That the Heir for the time, whether

male

male or female, may provide, he his Lady, or she her Husband, to a Liferent Annuity of two hundred Pounds *Sterling per annum*, which is appointed to come in place of the Terce or Courtsey to which they might have otherwise been intitled; and to which Annuity the above said legal Liferents are hereby expressly restricted. *Lastly*, it is enacted, That these irritant and resolute Clauses shall be adjected to the Investiture ensuing hereon, and repeated in the subsequent and all after Conveyances, Retours and Infeudments of the tailzied Estate, as the same, from time to time, passeth from one Member to another; and that the Failure shall import a Convention against the Omitter and his Heirs, so as to make the Inheritance fall to the Substitute next in Order by the Course of Succession above prefixed; who may from that time forward sue for a Declarator of the Delinquency, and establish his Right in manner above enjoined: And thereupon, Acts, &c. *Moreover*, in regard that I have reserved for my self the Liferent of one half of the above mentioned Lordship and Barony of C, it is therefore covenanted and agreed betwixt my said Son and me, That we shall be reciprocally bound to relieve each other of the equal Half of all Supplies, Taxt-ward Duties, &c. payable on account of the same for the Crop and Year of God One thousand seven hundred and thirty three, and in all time thereafter during my Lifetime. *Furthermore*, I hereby transmit and make over to the said B and his above named, which failing,

as aforesaid, all and singular Charters, &c. and all that hath followed or may follow thereupon. In the same manner, I assign and transfer to them the Rents, Revenues and annual Profits of the above said Lordship and Barony of C, as also the Ward, Feu and Blench Duties, and all other Casualties whatever accruing to me forth of the aforesaid Lands of D and Barony of G, and that for the Crop and Year of God before mentioned, and in time coming, with all Action and Pursuit anywise competent to me for the same; *Surrogating and substituting* the said B and his above named, under the Reservations before set forth, in my full Right and Place of the Premises, for now and ever. And whereas I chuse to retain the Evidences above assigned in my own Custody while I am alive, I promise to make them forthcoming to my said Son and his aforesaid, at whatever time they shall have necessarily to do therewith, upon condition that they be holden to return the same how soon the Exigency is over. Finally, I desire and require you, &c. [*Precept of Sasine in common Form, omitting only the Lands held by a Ward or Taxt-ward Tenure, for the Reason that was given for it elsewhere,*] conform to this Disposition, and Infeftments to follow thereon, or either of them; but always under the Reservations, Conditions and Qualifications above related, which are here holden as repeated and exprest: And that this on no account ye leave undone, &c. [*Registration, &c.*]

Besides

Besides the Division of Fees into *simple* and *tailzied* ones, there is yet a third sort, called *conjunct* Fees, *i. e.* Fees granted to two or more Persons jointly and their Heirs; of which Species the chief is that to a Man and Wife in conjunct Fee and Liferent, and their Heirs, or a Son *nominatim* and his Heirs, as in the following Pattern.

Disposition of a Burgal Tenement.

BE IT KNOWN to all Men, *That* I *A*, heritable Proprietor of the Tenement of Land and others after mentioned, *In consideration, &c. Have* sold and disposed, as I at this present, on the Condition after specified, sell, &c. to the said *B* and *C* his Spouse, in conjunct Fee and Liferent, and after their Decease, to *D* their Son, his Heirs or Assignies whatsoever, heritably and irredeemably, all and whole that my House or Tenement of Land, high and low, back and fore, with the Shops, Cellars, Office-houses, Gardens and Pertinents thereof, lying on the North Side of the High Street of ———, within the Clofs called ———, a little above ———, and bounded in the following Manner, namely, [*Describe the Tenement by its Bounding also:*] And which Tenement, with the Shops, Cellars and others above rehearsed, pertained formerly to *E*, who transferred the same to *F*, from whom I acquired Right, conform to the Disposition thereof in my favour, bearing date, &c. together with all Right, &c. *Further*, I bind and oblige my self, my Heirs and

Successors, to vest and seise the said *B* and *C* in conjunct Fee and Liferent, and after their Decease, the said *D* their Son and his above named, in the Tenement of Land and others above disposed, by Resignation thereof in manner under written. And for that purpose, I hereby make and constitute, &c. to resign, &c. all and whole that my House or Tenement of Land, high and low, back and fore, with the Shops, &c. lying and bounded in manner above expressed, together with all Right, &c. *In the Hands* of the Provost or any one of the Magistrates of the Burgh of ——— for the time, as in the Hands of our Sovereign Lord the King, my immediate Superior thereof; *In favour*, and for new Infeftment of the same to be made and granted to the said *B* and *C* in conjunct Fee and Liferent, and after their Decease, &c. absolutely and irredeemably, in due and competent Form: [*In these conjunct Infeftments, the following Provision seldom fails to take place:*] Providing always that it be allowable for the said *B* by himself alone, without the Concurrence of his Spouse or Son, to sell, wadset, or otherwise dispose on the above said Tenement, either in whole or in part as he hath a mind, or to burden the same with the Payment of whatever Sums he shall think fit; and, in short, to do every other thing with respect to the Usage and Disposal thereof, that he might have done if his forenamed Spouse and Son had not at all been provided to it: And thereupon, Acts, &c. Which House or Tenement, with the Shops, &c.

above

above denominated, I the said *A* engage my self and mine afore said to warrant, &c. as also, to ex-
 tricate and disburden the same of all Taxations,
 Annuities, and every other publick Burden what-
 ever with which they shall stand affected at the
 Term of — next to come, being the Time at
 which the said *B* his Possession is appointed to
 commence. *Moreover*, I make and constitute the
 said *B* and *C* in conjunct Fee and Liferent, and
 after their Decease, &c. my Cessionaries and As-
 signies, in and to all and singular Charters, &c.
 with all that hath followed or may follow there-
 on: And in like manner, in and to the Rents
 and Duties of the forementioned Tenement fal-
 ling due at the above said Term of — and in
 all time thereafter, with all Action, &c. [*The As-*
signation is sometimes prolonged with Clauses to the
following Purpose,] At the same time, I assign and
 transfer to them a Servitude on the Court on the
 South Side of the above mentioned Tenement,
 being forty Foots in measure, or thereabout,
 Southward from the Front thereof, so as nothing
 can be built or erected thereon to prejudice or
 obstruct the Light and Prospect of the afore said
 Tenement: *Besides*, I transmit and make over to
 them, the Certificate or Policy of Insurance by
 the friendly Society of Heritors in the Town of
Edinburgh, for making good the Loss of the a-
 bove said Tenement by Fire; on condition that
 the said *B* be holden and obliged, as he, by the
 Acceptance of this Assignment engages himself,
 his Heirs and Successors, to relieve me and mine
 afore-

aforesaid of the Sum of forty Pounds *Sterling*, and Interest thereof from the Term of his Entry above prefixed, being the Premium of the above said Insurance, for which I have granted Bond to the forementioned Society. *Again*, I dispoſe and paſs over to them my whole Houſhold Plenifhing and Furniture, both fixed and unfixed, within and about the Houſe, Shops, and others above deſigned, according as the Extent thereof ſtands aſcertained by an Inventory ſubſcribed by me at the ſigning hereof, which is here holden as repeated; *ſurrogating* and *ſubſtituting* the ſaid *B* and *C*, and after their Deceafe, the ſaid *D* their Son and his above named, on the Conditions above related, in my full Right and Place of the Premifſes for ever. *Furthermore*, I have herewith delivered up to the ſaid *B*, the Writs and Evidences above aſſigned, conform to a Catalogue thereof ſubſcribed by me on the Day of the Date hereof, to be kept, &c. *Laſtly*, I conſent to the Regiſtration hereof in the Burrough Court-books of —, or in the Books of any other competent Judicatory, there to remain for Preſervation, and if need be, &c. [*Follows the Clause of Subscription.*]

N. B. Rights holden by this Tenure are paſſed over by a ſingle Infeſtment only, to wit, by Reſignation, although the Instruments relating to the Completion of them participate of the Nature of Saſines, as much as of Reſignations; and thence it is, that in Transmiſſions of this kind the

Precept

Precept of Sasine never takes Place, because it is a very unnecessary Clause in such Conveyances.

Although the Right of Administration of a Wife's immoveable Estate, is a Faculty so inherent in the Character of a Husband, that it is a Question if it can be renounced even by antenuptial Stipulations, yet a Person may effectually convey an Estate to a Wife without subjecting it to the Husband's Administration. Take the following Precedent.

Disposition of a Salmond-fishing, &c. made to a married Woman, so as not to be affected with the Debts or Deeds of her Husband, nor subjected to his jus mariti.

BE IT KNOWN to all Men, That I *A*, heritable Proprietor of the Salmond-fishing and others after mentioned, for the Love and Esteem which I bear to *B* my Daughter, Spouse to *C*, and for divers other Reasons persuading me to do so; Have sold and disposed, as I at this present, on the Conditions after specified, sell, &c. to the said *B* in Liferent, and after her Decease, to *D* her Son; whom failing, to her own nearest Heirs or Assigns whatsoever, absolutely and irredeemably, all and whole these my three Nets Salmond-fishing on the Water of —, within the Territory of the Burgh of — in the Shire of —; with the Cobles, Nets, Sinkers, Fish-fats, and Pertinents thereof: *As also*, all and whole

whole my Mill of *A*, lying in the Regality of
 ———, with the astricted Multures, Knaveſhips
 and Sequels of the ſame, together with all Rights,
 &c. Farther, I bind and oblige my ſelf, [*Clause*
of Infeſtment in common Form.] And for accompliſhing the above ſaid Infeſtment by Reſignation,
 I make and conſtitute, &c. to reſign, &c. *In the*
Hands, &c. in due and competent Form : Pro-
 viding always, as it is hereby expreſſy provided
 and declared, and appointed to be adjected to the
 Inveſtiture enſuing hereon, That in regard the
 above mentioned Subjects are made over to my
 Daughter merely on the Score of Liberality and
 Affection, the ſaid *C* her Husband ſhall have no
 manner of Concern with the Revenues and Pro-
 fits thereof, on account of the *jus mariti*, the
 Courteſy of *Scotland*, or of any other Title what-
 ever; and that the ſame ſhall neither be liable to
 his Deeds, nor ſubjected to the legal Diligence
 of his Creditors, for payment of the Debts al-
 ready contracted, or to be contracted by him at
 any time hereafter; but that, notwithstanding
 ſuch Debts, Deeds or Diligence, it ſhall be al-
 lowable for the ſaid *B* by herſelf alone, with-
 out the Conſent of her Husband, to uplift and
 diſcharge Rents and Casualties of the before
 mentioned Subjects, and to apply the ſame as ſhe
 ſhall think proper; to remove and put in Tenants,
 ſet Tacks, and do every other thing with relation
 to the Management thereof, as if ſhe were ſtill a
 ſingle Perſon : And thereupon, acts, &c. *More-*
over, I aſſign and transfer to the ſaid *B*, and *D*

her

her Son, for their specifick Rights of Life-rent and Fee above expressed, the whole Writings, Evidences and Securities of the above said Subjects, with all that hath followed, &c. *In like manner,* I transmit and make over to them, a Servitude and Right of Affrication on the Lands of ———; by which the Heiritors and Possessors of these Lands are obliged to grind their Victual at the Mill of *A*, and to pay Tribute after their usual Manner, conform to the Bond of Thirlage in my favour concerning that Affair, bearing Date, &c. together with the aforesaid Bond it self, and all Action, &c. *surrogating and substituting* the said *B* and *D*, for their respective Interests, in my full Right and Place of the Premises for ever. *Besides,* I hereby astrict and thirle my Lands of ——— to the Mill of *A* above disposed, and engage my self, my Heirs and Successors, to cause the Tenants and Possessors of these Lands from time to time, carry the whole Grain and Product thereof to the above said Mill, where we shall be holden to grind the same in all time coming, and to pay Multure and other Gratuities according to Use and Wont; reserving nevertheless the Seed, Horse-corn and Tithes, and also my own Farm-rent in so far as the same is not carried to another Mill; as to all which the forementioned Servitude is not to be extended. *Furthermore,* I declare that this shall be a valid Evidence, although it is found in my Custody, or in the Keeping of any other Person, undelivered to my Daughter, at the time of my Death, notwithstanding any

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Law or Statute to the contrary. *Lastly*, I desire and require you, [*Precept of Sasine, Registration, &c.*]

Rights acquired by one in name of another, are such as are purchased by a Tutor or Curator on account of the Pupil or Minor, or by a Factor in behalf of his Constituent, and the like; whereof the Stile runs thus, ——— *In consideration of the Sum of ——— instantly paid in to me by B Tutor (Curator or Factor) to C, in name and behalf of his said Pupil (Minor or Constituent) of which I hereby discharge him, &c. Have sold and disposed, and at this present sell and dispose to the said C (the Pupil, &c.) without mentioning the Guardian or Factor again throughout the whole of the Conveyance, except in that Part which sets forth the Delivery of the Writings, where you say, They are given up to the Tutelary or Factor in name of the Ward or Constituent.*

In the same manner, where the Right is acquired by a Society or Incorporation, the Price is said to be paid in by the Treasurer of the Society, or Box-master of the Incorporation, in behalf of the Community; and the dispositive and other Clauses of the Conveyance run directly in name of the Society itself, or of the Magistrates and common Council of the Burgh, and their Successors in Office, from time to time, as representing the whole Body and Community thereof; or of the Deacon, Box-master, and Masters of Craft of the Incorporation, and their Successors
in

in Office, for themselves and in behalf of the rest of the Members and Brethren of it.

Among this last mentioned Class of Conveyances, I may place that which follows, whereby one who had stept aside and failed in his Credit, makes over his Estate to a select Number of his Creditors, for themselves and as Trustees for the rest, to the end it may be put to Sale, and the Price applied in payment of the Disposer's Debts.

Disposition to Trustees in behalf of one's Creditors.

K NOW ALL MEN, *That I A*, heritable Proprietor, &c. *Being* indebted to divers Persons my Creditors in considerable Sums of Money, according to the several Bonds and other Vouchers of Debt granted by me, and others with me, to them and their Cedents, concerning the same; *And being* thoroughly satisfied, for their farther Security, as well as for obviating the Load of Expences they might have otherwise heap'd up on my Head by repeated Courses of Diligence for operating Payment of the above said Sums, to make the Alienation under written: *Have* sold and dispoed, as I at this present, on the Conditions after mentioned, sell, &c. to *B, C, D* and *E*, or the major Part of them, for themselves, and as Trustees or Fiduciaries for the rest of my Creditors, named in a separate Inventory or List of Debts relative to this Disposition, signed by me at the time of the Date hereof, absolutely and irredeemably, all and whole [*Here the Lands, &c.*

were pointed out and denominat^d,] together with all Right, &c. In the which Lands, [*Obligation to infect forma communi.*] And for expediting the above mentioned Infestment by Resignation, I hereby make and constitute, &c. to resign, &c. *In the Hands, &c. In favour,* and for new Infestment thereof to be made and granted to the said B, C, D and E, or the major Part of them, for themselves, and as Trustees for the rest of my Creditors, absolutely and irredeemably, in due and competent Form. It is however covenanted and agreed, in regard that this Disposition contains my whole Estate, both real and personal, *That* my several Creditors, by the Acceptance thereof, shall be holden to receive the same in full Satisfaction of their respective Debts and Claims, and that how soon soever they have actually got payment of their specifick Shares of the Price arising from the Sale of the particular Subjects above and afterwards enumerated, according as the same shall be apportioned by the Scheme of Division to be drawn up in conformity to the Decree-arbitral, to be pronounced in consequence of the Submission in which they are to enter for determining their Different Preferences on the above said Subjects: How soon soever, I say, my several Creditors have recovered Payment of their liquidated Quotas arising from thence, it is agreed, *That* they, their Heirs, Executors or Assignies for the time, shall be holden to exoner and discharge me, my Heirs and Executors, of all Action and Execution, personal and real, competent

sent to them against me, or against the Lands and Estate, heritable or moveable, which I may either acquire or succeed to at any time hereafter, on account of the before mentioned Claims. *Further*, it is enacted and declared, *That* the Life-rent Annuity of one hundred Pounds *Sterling*, to which *F* my Spouse is provided by our Marriage-settlement, is still reserved to her notwithstanding this Alienation : *That* my sole Intention, by divesting my self of all my Possessions, being merely with a View to have my Debts satisfied, and my Person kept free from the impendent Diligence of Creditors, the Trustees shall be holden to put the aforesaid Possessions to Sale, either by way of publick Auction, or by a special Transaction with particular Persons, as they themselves shall reckon most expedient ; and that they shall be bound, after Deduction of their necessary Charges, and of a suitable Gratification in consideration of their own Trouble, to apply the Price arising from the Sale towards Payment of the Debts contained in the Inventory above expressed, according as my several Creditors therein named shall be ranked and classed by the Arbiters, to whom they are to refer their respective Preferences on the particular Funds hereby allotted for their Bayment ; provided, however, that it be allowable for the Trustees to oppose or disprove the above said Debts *prout de jure*, all Exceptions against the same being still reserved : *That* the forenamed Fiduciaries are pitched upon and set aside among the Number of my other Creditors,

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ditors, with this Quality, That none of them, their Heirs or Representatives, shall be charged with Omissions in the matter of their Management, but only for their actual Intromissions; which by the by is thus far limited, that it shall not be extended against them *in solidum*, but only against the Intromitter himself and his Heirs *separatim* from the rest: *That* they, or the major Part of them, are fully authorized to constitute Factors or Cashiers for collecting and ingathering the Revenues of my whole Estate, and of the Prices accruing from a Sale of the same, and to allow them reasonable Salaries for their Pains; providing these Cashiers find Caution in the first place for the faithful Administration of their Office, which is all that is required of their Constituents to see unto: *That* in case any one or more of the above named Fiduciaries shall think fit to give over the Office, or in case of the Failure of any of them by Decease, it shall be allowable for the Creditors, in either of these Events, to single out so many other Persons from among themselves, for supplying the Vacancy, as, being added to the remaining Trustees, make up the Number *Four*, whereof the greater Part is still to be accounted a Quorum; and that the Persons to be chosen in this manner shall be as fully invested with all the Powers and Faculties relative to the Office, as if they had been called to it by the present Election: *That* the Purchasers are to have no Concern with the Application of the Price or Purchase-money, nor are they to be tied down to the

the Qualifications hereunto annexed, farther than to that of the Liferent Annuity above exprest; because the other Conditions, being calculated only for a particular Purpose, receive their Implement in the Execution of the Trust here mentioned: And thereupon, Acts, &c. Moreover, I the said A bind and oblige my self, my Heirs and Successors, to warrant and secure the Lands, Baronies and others above disposed, to the forenamed Trustees, or to any Person or Persons who shall acquire the same from them, or the major Part of them, at all Hands, &c. Besides, I make and constitute the above named Trustees, or any three of them for the time, my Cessionaries and Assignies, in and to the whole Writs, Evidences and Securities of the forementioned Lands and Estate, with all that hath followed, &c. and also, in and to the Rents, Profits and Casualties of the same, of the Crop and Year of God —, and in time coming, with all Action, &c. In like manner, I transmit and make over to them, or their Quorum, as was said, all and singular Debts and Sums of Money, whether heritable or moveable, resting and indebted to me by Bonds, Bills, Decrees, Infeftments, or any other Way whatsoever: Particularly, the principal Sum of —, contained in a Bond granted to me by G, bearing date, &c. Item, the Sum of —, due to me by H, conform to a Bill, dated, &c. Item, the Sum of —, specified in a Bottomry Bond made to me by J, of Date, &c. Item, the Sum of —, resting to me by K, in terms of a South-
Sea

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Sea Bond, dated, &c. *Item*, the Sum of ——— in the Hands of *L*, my Factor at *M*, as appears by my Account-current with him, which is dated, &c. (*& sic de cæteris*,) with the Annual-rents and liquidated Penalties of such of the fore-mentioned principal Sums as bear them; together with these Bonds, Bills and other Writings themselves, and all that hath followed, &c. *At the same time*; I assign and transfer to them all and singular Corns, Cattle, Horse, Nolt, Sheep, Rents and Duties of Lands, Houses and others, insight Plenishing, Instruments of Husbandry, Household-furniture and other moveable Goods pertaining to me; of whatever Denomination; dispensing with the Generality of this Assignment, and admitting the same to be as effectual as if it were never so special; and *surrogating* and *substituting* the forenamed Fiduciaries, under the Qualifications above rehearsed, in my full Right and Place of the Premises, for now and ever: With Power to them to sue for and uplift the Debts and Sums of Money particularly and generally above expressed, and to roup, sell or otherwise dispose of the Household-plenishing and other moveable Goods before assigned; and, in a word, to do every other thing in relation thereunto that I might have done my self before the granting of this Assignment; which I shall be holden to warrant against my own proper Facts and Deeds, done or to be done, in prejudice thereof. *Furthermore*, I have herewith delivered up to the Trustees so many of the Evidences of my real Estate

state as are in my Custody, and all the Bonds, Bills and other Vouchers and Adminicles of my personal Estate, set forth in the Catalogue or Inventory of Debts above mentioned, having in the Interim, with my own Hands, given them possession of all my Moveables. *Lastly*, I desire and require you, &c. [*Precept of Sasine,*] but always with the Burden of the Reservations and Conditions above related : And that this on no account ye leave undone, &c. [*Registration, &c.*]

Like unto this Species of Dispositions are these that go by the Name of *Mortifications*, of which sort I give you the following Instance.

Mortification.

K NOW ALL MEN, *That I A, Whereas* by a Disposition and Deed of Entail, in favour of *B* my Son, and the other Heirs of Tailzie and Provision therein designed, I dispoñe and make over to them the Lands and Estate therein mentioned, reserving to my self a Faculty to alienate the Parts and Portions thereof hereafter particularized, either absolutely or under Reversion as I have a mind, and to do every other thing in relation to the Usage and Disposal of that Part of the Inheritance, that I could have done before the making of the above said Settlement ; as the same, bearing Date —, and containing divers other Clauses and Conditions, more fully relates : *And whereas* I have resolved, in pursuance of the

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before

before mentioned Faculty, to exercise and make use of the same to the Purpose under written : *Know all Men*, I say, That on these Considerations, I have gifted and disposed, and at this present, on the Conditions after specified, gift, &c. to C Minister, D, E and F Elders of the Church of — and their Successors in the Ministry and Eldership of that Church from time to time, as Tutelaries or Guardians to the Society after named, all and whole, an Annuity or yearly Duty of sixty Bolls Bear, and twenty Bolls Meal, of the Measure of the Shire of G, upliftable betwixt *Christmas* and *Candlemas* yearly, beginning the first Year's Payment thereof betwixt *Christmas* One thousand seven hundred and thirty and *Candlemas* One thousand seven hundred and thirty one, and that for the Crop One thousand seven hundred and thirty, and so forth yearly thereafter in all time coming, forth of the Lands of [*Here the Lands, &c. were described,*] or forth of any Part or Portion thereof, out of the readiest Rents and annual Profits of the same. With which Annuity, I the said A, according to the express Quality of the Deed of Entail above rehearsed, engage my self, the said B my Son, and the other Heirs of Tailzie and Provision succeeding to me in the above said Estate, to vest and seise the forenamed Tutelaries, in behalf of the Persons afterwards denominated, absolutely and irredeemably; and that by a single Infeftment only, to be holden of me, my Heirs and Successors, *in puram eleemosynam, & in manum mortuam,*
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pro precibus & suffragiis of the poor and indigent Persons hereafter described, for all other Claims and Demands whatsoever. Providing always that the above named Tutelaries, and their Successors in Office in all time coming, be holden to observe the following Injunctions. In the *first* Place, I appoint the said C to appear forthwith before the Judge-ordinary of the Place, and give his Oath *de fidei administratione* touching the Disposal of the Gratuity, and afterwards to administer the like Oath to the rest of the Guardians; as I also appoint all the after Incumbents in the Ministry of the Church of — immediately on the back of their Accession to the Charge, to take and dispense the above said Oath in the very same manner. In the *second* Place, with respect to the Persons who are to have the Benefit of this Deed of Mortification, it is declared, That they shall only be such as have sometime or other been Tenants or Servants in the Parish of —, and that no one in a Capacity to purchase a Living by his own Industry shall have any Claim or Title to it. *Thirdly*, as to the Right of Patronage, or Power of presenting those Persons, I hereby reserve that to my self while I am alive, and after my Death, I confer the Faculty on the Tutelaries, to whom I must in the mean time particularly recommend it, as they would not love to eradicate all pious and charitable Acts of this kind; That they allow none to be advantaged thereby, except such Persons as answer exactly to the Character of those just now described;

and that even amidst them, they single out all poor and needy House-keepers, and other Persons who have once been in a good Case and Circumstance in the World, and whose Means, by the Course of Providence, have failed them. *Fourthly*, with relation to the Annuity it self, I declare that it may either be sold for a Price, or distributed in Specie, according to the Discretion of the Managers, who are not at all limited or tied up in the Measure of their Distribution, but may divide the Gratuity as their own Prudence shall direct; only I must request it of them to have a peculiar Regard to the Exigency of the several Objects on whom the Bounty is bestowed, and to proportionate their particular Quotas thereof according as the different Degrees of their Necessity call for a less or greater Share. *Fifthly*, I appoint this Evidence to be recorded in the Books of Session, and two Extracts thereof to be taken out, whereof one is to be kept by my self, and the other, with the second Part of this Investiture, to be kept by the Guardians for avouching their Office. *Moreover*, I hereby assign and make over to the forenamed Tutelaries, as much of the Rents, Revenues and Casualties of the Lands, and others before mentioned, due at *Candlemas* next to come, and in all time thereafter, as will completely satisfy the above said Annuity, as the same from time to time falls due; and all Action, &c. *surrogating* and *substituting* them, for the Ends and Purposes above set forth, in my full Right and Place of the Premises for

now

now and ever. Furthermore, I the said *A*, in consequence of the Faculty above expressed, bind and oblige my self, and the Heirs of Entail already mentioned, to warrant and maintain the above said Annuity, and the Lands and others out of which the same is to be uplifted, against all Facts and Deeds to be done by us at any time hereafter in prejudice of this Alienation. Lastly, I desire and require you [*Precept of Sasine, Registration, &c.*]

S E C T. III.

Dispositions distinguished by the Circumstance and Quality of the Subject disposed.

THe third differencing Character I mentioned in the Stile of Dispositions, is owing to the Diversity of the Matter or Nature of the Thing that is sold, and Circumstances thereof: For every particular heritable Subject hath something or other peculiar to it self in the Conveyance of it, and one should know how to express himself in proper Terms in the Transmission of every one of them. But this last Point being pretty much cleared up by the several Examples dispersed up and down throughout the foregoing Part of the Title, all that remains to be considered is, the Transmission of Rights affected with real Burdens and Incumbrances, and that of redeemable Infeft-

Infestments; which two Topicks fall therefore to be the Subject of the present Section.

For the *First* then : In a Case where one is to buy Lands against which others have a Claim, as it may be thought that legal Diligence will establish a better Right than a voluntary Disposition, the Purchaser may be assigned by the Conveyance to the Reversion of all Adjudications, and other real Rights burdening the Estate; and allowed to apply so much of the Price in payment of the Sums for which they are redeemable, and also to ascribe his Possession to all or any one of these Securities, or to the voluntary Disposition, as he hath a mind. The Diversity arising from this particular Circumstance is summed up in the three or four following Observations: 1^{mo}, The Narrative is framed thus, — In regard that B hath instantly made payment to me of the Sum of one thousand Pounds Sterling, whereof I hereby discharge him, his Heirs and Executors for ever; which Sum being added to these contained in the Adjudications and other real Rights hereafter rehearsed (with the Payment whereof the Subject-matter of this Disposition stands burdened and affected in manner after specified) amounts to six thousand Pounds Money foresaid, which is deemed to be the full Worth and Value of the Lands and Estate under written. Know all Men, I say, That for this Reason I have sold and disposed, &c. 2^{do}, Clause of Warranty is backed with an Exception of all the Burdens and Thraldoms, either legal or voluntary, with which the Estate is incumbered

at the time of the Sale; thus, — Excepting however from this Obligation, the several Rights and Securities after specified, namely, a Decree of Adjudication obtained against me on the — Day of, &c. at the Instance of C, appropriating to him the aforesaid Lands of D, with the Pertinents, for Payment of the extended Sum of —, and of certain other Sums set forth in the above said Decree. Item, A Disposition of the forementioned Lands of E in favour of the deceased F, bearing Date, &c. by which it is conditioned that these Lands shall be redeemable on Payment or Consignation of the Sum of —, with the Annualrents or Back-tack Duties resting at the time of Redemption: Item, An Annuity or yearly Duty of — payable to G, forth of the above mentioned Lands of H, and redeemable from him on Payment of the principal Sum of —, with the Annualrents thereof and termly Failzies due at the time, according to an heritable Bond, dated —, granted by the deceased I my Father, in his favour, concerning the same, (& sic de cæteris.) Item, The Assignation to the Writs and Evidences is lengthned out with an additional one to the Reversion of the several Rights enumerated in the foregoing Exception, in this manner: — Besides, I hereby assign and make over to them the Right of Reversion of the forementioned Lands of D, to which I am intitled in consequence of the Act of Parliament concerning the Redemption of Adjudications; and also, the Clauses and Articles of Reversion mentioned in the heritable Bond and redeemable Disposition above narrated, with all Right and Title what-

whatever anywise competent to me towards the Redemption of the particular Subjects enumerated in the specifick Securities above expressed: Surrogating and substituting the said B and his above named, on the Condition under written, in my full Right and Place of the Premises, for now and ever. 4to, The Assignment to the Reversion is seconded with an Obligation and Declaration to the following purpose: But in regard that the principal Sums in these Securities, and the Interest thereof to the Term of ——— in the ensuing Year One thousand seven hundred and thirty two, are allowed in the first End of the Price of the before mentioned Lands and Estate, it is enacted and decreed, That the said B shall be holden, as he by the Acceptance hereof engages himself, his Heirs and Successors, to relieve me and mine aforesaid of the Sums of Money, Principal, Annual-rents, liquidated Penalties and termly Failzies, contained in the several Rights and Securities above rehearsed, and of all Action and Pursuit, real or personal, that may be commenced against me, or my other Estate, heritable or moveable, in virtue thereof; and that under the penal Sum of ——— in case of Failure, over and above the Performance. It is however provided and declared, That it shall be allowable for the said B and his Successors to take Dispositions and Assignations to the above mentioned real Securities, and to ascribe their Possession to any one, or all of them, or to this Deed of Alienation, as they shall think fit: With Power to them, on the Condition above set forth, to intromit with and uplift, &c. to remove and put in Tenants, &c. to loose and re-
deem

deem the above said Estate from the respective Intanglements incumbring the same, and for that end to use Premonition, either in my Name or their own, as they have a mind, to consign the Money, sue for Declarators of Redemption, and do every other thing concerning the Premises that I might have done myself before the granting of this Assignment.

N. B. If the Disposer would act wisely, it would be more for his Interest to get a Bond from the Purchaser, narrating the Disposition, and corroborating the Obligation on his part, to relieve the Seller of the Sums due by the heritable Securities mentioned in the Conveyance, than to take him only bound to do so by a Writing in his own Custody, that is not at the Disposer's Command: As on the contrary, it would be no Error though the Buyer took a simulate Bond from the Seller for a considerable Sum, at least for the Price of the Subject, on purpose to carry on an Adjudication for farther Security of the Acquisition; and that the same was done accordingly.

At other times, when the Lands are inveigled in these or the like Circumstances, there may be one Estate disposed in real Warrandice and Security of another.

Disposition of Lands, Principal and Warrandice.

BE IT KNOWN to all Men, That I A, &c. In consideration, &c. Have sold and disposed, and at this present sell and dispose to the said B, his

his Heirs, &c. absolutely and irredeemably, all and whole the Lands and Barony of *A*, comprehending the several Lands, Towns, Mills, Mill-lands, Tithes, Patronages, Jurisdiction and others after specified, to wit, [*Insert the Particulars,*] all lying in the Shire of ———; together with all Right, &c. In real Warrantice and Security whereof, I likewise dispone to the said *B* and his above named, heritably, on the Conditions under written, all and whole the Lands and Barony of *B*, with the Tower, Fortalice, Manour-place, Houses, Biggings, Yards, Orchards, Parts, Pendicles and Pertinents of the same, as they are more fully denominated in my Rights and Infeftments thereof, all lying, &c. So that if the forementioned Barony of *A*, or any Part thereof, shall happen to be evicted from them, on account of the Defects that may be in my Title to it, or of any Fact and Deed of mine, my Predecessors or Authors, incumbring the same, in that case the said *B* and his aforesaid are to have free Access to the Lands and Barony of *C*, disposed to them in special Warrantice and Security of those principally passed over, and may forthwith enter to the Possession of the same, at least of so much thereof as shall be tantamount and answerable to the Eviction; to be from that time forward peaceably enjoyed by them, till such time as they are entirely set free of the Distress. In the which Lands, Baronies and others, principally and in Warranty, above disposed, I bind and oblige myself, my Heirs and Successors, under the Limitations

tions after mentioned, to vest and seise, &c. [*forma communi.*] And for effectuating the above said Infeoffment by Resignation, I hereby make and constitute, &c. to resign, &c. in due and competent Form : Provided always, as it is hereby expressly provided and decreed, and appointed to be adjected to the Investiture ensuing hereon, That the said *B* and his above named, their Entry to the Possession of the Warrandice-lands shall stand suspended till such time as the Subjects principally disposed, or some Part thereof, shall be evicted from them ; from which time forward they are permitted to enter to and possess the same, answerably to the Amount of the Eviction, and to continue their Possession until the forementioned Barony of *A*, with the Pertinents, are absolutely disengaged of all the real Burdens and Inveiglements with which they are intangled at the time of the Date hereof : And that done, they shall be holden to renounce and make over in my favour the above said Lands and Barony of *B*, *omni habili modo quo de jure*, with Warrandice from their own proper Facts and Deeds. It is also provided and decreed, That how soon any Action threatening the Eviction of the Estate principally disposed shall be commenced, the said *B* shall be bound to intimate the same to me sometime or other, at farthest, before Litiscontestation is made in the Cause ; and to give up in the interim the Writs and Evidences of the Subject brought into question, on my Receipt and Obligation to return the same whenever the Process is utterly concluded :

And thereupon, Acts, &c. *Further*, I the said *A* bind and oblige my self and mine aforesaid, without prejudice to the real Security above written, to warrant and maintain this Disposition, with the Subject-matter thereof, to be good and sufficient to the said *B* and his above named, at all Hands, &c. I likewise oblige my self to ex-
 tricate and disburden the Lands and Barony of *A*, with the Pertinents, of all Inhibitions, Adjudications, Wadset-rights, Infestments of Annualrent, and of all other Thraldoms and Incumbrances whatever wherewith they stand presently affected; and to give up to the said *B* authentick Acquittances thereof, against the Term of ——— in the ensuing Year One thousand seven hundred and thirty four, under the penal Sum of ——— in case of Failure, besides Performance: As also, to free and relieve him and his aforesaid of all Feuduties, &c. accruing due on the Barony of *A* principally disposed, at the Term of *Whitsunday* next to come, being the Period of Time at which his Possession doth commence. *Moreover*, I hereby transmit and make over to the said *B* and his above named, all and singular Charters, &c. granted to me, my Authors or Predecessors, in relation to the above said Estate of *A*, with the whole Heads, Clauses and Articles thereof, and all that hath followed, &c. *In like manner*, I assign and transfer to them the Rents, Farms and annual Profits of this last mentioned Estate, for the Crop and Year of God One thousand seven hundred and thirty three, and in time coming, with all A-
 ction,

tion, &c. *surrogating and substituting, &c.* Furthermore, I have herewith delivered up to the said B the Writs and Evidences above assigned, &c. Lastly, I desire and require you, &c. to pass and deliver to the said B heritable State and Safine, &c. of all and singular the Lands, Baronies and others, principally and in Warrantice, above disposed, which are altogether holden as herein repeated and expressed, by delivering to him, &c. but always with the Burden of the Limitations and Conditions above rehearsed: And that this on no account ye leave undone, &c. [*Registration, &c.*]

In Cases of this Nature, where the Subject-matter of the Sale is loaded either with legal or voluntary Rights, the Disponee sometimes contents himself with a bare Disposition of the Purchase, in which he takes the Granter personally bound to disburden the Estate of these real Incumbrances against a certain Time allotted for that purpose; and if the Obligant fails in the Performance, he may be dealt with, on getting a farther Term assigned them for the doing it, to give a real Security in place of the former personal one. And this Security being much of a piece with those here treated of, it may therefore seem proper to give it a Place among them.

Model

Model of a Bond or Writing-obligatory, ratifying a personal Engagement on the part of the Granter, to rid an Estate, which he had given out of himself by a Deed of Alienation, of certain Incumbrances affecting it at the time of the Sale, and converting the Engagement from a personal to a real Security.

K NOW ALL MEN, *That I A, In as much as, by a Right and Disposition dated, &c. I made over to B and C Brothers, and their Heirs, jointly, the Lands and Barony of — —, and engaged my self to rid and acquit the same of all the real Burdens and Incumbrances with which they stood affected at that time, and to give up to the said B and C sufficient Acquittances thereof, with a distinct Progress of the Writs and Evidences of the Estate, in manner more fully related in the above said Disposition; And in as much as the Time prefixed for that End is already elapsed, and that the said B and C, on my granting the corroborative Security under written, have condescended to assign me a farther Term for the same purpose: Know all Men, I say, That, for these Reasons, I have become bound and obliged, and at this present, in support of the Obligation set forth in the Disposition above rehearsed, (and without Prejudice to it, or to any Diligence that hath followed or may follow upon it, sed accumulando jura juribus)* bind and oblige my self, my Heirs and

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Successors, to extricate and disburden the above mentioned Lands and Estate, of all Hornings, Inhibitions, Adjudications, Infestments, and of all other Burdens and Thraldoms whatever, wherewith they were incumbered at the time of the Date of the aforesaid Alienation; *And also*, to deliver up to the said *B* and *C* authentick Acquittances and Renunciations of these Incumbrances, with a clear and distinct Progress of the Evidences belonging to their Acquisition, against the Term of ——— next to come, under the Penalty of ——— in case of Failure, over and above the Performance. *And for farther Security*, I likewise oblige my self and mine aforesaid, on the Conditions after specified, to infest and seise the said *B* and *C* jointly, their Heirs or Assigns, in all and whole [*Describe the Lands;*] so that if the Estate formerly disposed, or any Part thereof, shall happen to be evicted, [*as in the foregoing Model :*] And that by two several Infestments, &c. Besides; I engage my self to obtain the Superior's Consent to the Reception of the Infestment, whether it is accomplished by Resignation or Confirmation, and to expend all the incident Charges necessary towards the Completion thereof. And for expediting the above said Infestment by Resignation, I the said *A* hereby make and constitute, &c. to resign, &c. in due and competent Form : Providing always, [*as in the Model already referred to, mutatis mutandis.*] Further, it is enacted, That notwithstanding this real Security, the Clause of personal Warranty, men-

mentioned in the above said Disposition, is still to continue in its outmost Strength; and that the said B and C, and their above named, may make use either of *this* or *that* as they have a mind; the one being granted without Prejudice to the other: And thereupon acts, &c. *Moreover*, I engage my self, my Heirs and Successors, to warrant the Lands, and others above resigned, at all hands, &c. *Furthermore*, I desire and require you, &c. [*Precept of Sasine, Registration, &c.*]

Thus far concerning the Transmission of Rights affected with real Burdens and Incumbrances: Occasion now offers to explain the Transmission of redeemable Infeftments:

A singular Successor acquiring a Right that is only made over for a Time, hath not the Security for his Purchase that he might have who acquires an absolute and irredeemable one. *This* may satisfy himself with respect to the State of his Acquest by inspecting the Registers, but *that* hath no such Advantage; because the former Right may be voided by an Order of Redemption; and the Instruments of Premonition and Consignation on which it proceeds, are not to be found upon Record. Besides, a redeemable Right may be extinguished by Intrómission with the Rent of the Lands; and the Nature of this Intrómission being such as is not practicable in all Cases to be supported by written Adminicles, it may be proved even by Witnesses, as a Thing which naturally falls under their Observation:

So

So that the Acquirer of such a Right runs the Risk not only of a former Course of Redemption, but also of an Action of Count and Reckoning; for which Reason, if he strike up the Bargain without the Consent of the Reverser, he must trust much to the Ability of the Seller, on whose Warranty, in that Case, he must wholly rely.

These temporary Rights I have here in view are, *Infestments of Annualrent, Wadset-rights, and Infestments on Adjudications.*

1. *Disposition of an Infestment of Annualrent.*

K NOW ALL MEN, *That I A*, as having Right in manner under written; *Seeing*, in conformity to an heritable Bond granted to me by *B*, of the Date —, I stand vested with an Annualrent or yearly Duty of eight hundred Pounds *Scots* Money, or such an Annualrent, as by the Laws of this Kingdom for the time shall correspond to the principal Sum of sixteen thousand Pounds Money foresaid, upliftable at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, forth of the Lands and others hereafter denominated; as in the above said Bond, and in the rest of the Investiture after mentioned ensuing upon it, more largely is represented: *And seeing C* hath made Payment to me of a certain Sum of Money equivalent to the Sums afterwards assigned, whereof I hereby discharge him, his Heirs and Executors for now and ever: *Have* sold and disposed, as I at this present sell and dis-

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pone,

pone, to the said C, his Heirs or Assignies, heritably, and under Reversion in manner after specified, all and whole the forementioned Annualrent of eight hundred Pounds, or such an Annuity, as by the Laws of this Kingdom for the time shall correspond and be answerable to the above said principal Sum of sixteen thousand Pounds (a), to be uplifted at the Terms above mentioned, forth of all and singular [*Transcribe the Lands, &c. from the Annualrenter's Sasine.*] or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Profits of the same; together with all Right, &c. In the which Annuity I bind and oblige my self, my Heirs and Successors, on the Condition after specified, to infeft and seise the said C and his above named, on their own proper Charges and Expenses, heritably; and that by two several Infeftments and Manners of Holding, in due and competent Form: The one whereof to be holden of me and mine aforesaid, and the other of the said B his immediate Superiors of the Lands, Barony, and others above designed; both in free Blench, for

(a) But when a Part of the principal Sum contained in the Bond being paid, a proportional Part of the Annualrent is renounced, if the Remainder is to be assigned, say, — All and whole an Annualrent of four hundred Pounds, being the equal half of the forementioned Annualrent of eight hundred Pounds, or such an Annuity as by the Laws of this Kingdom for the time shall be answerable to the Sum of eight thousand Pounds, only resting of the above said principal Sum of sixteen thousand Pounds. And observe the same Circumstance in the Procuratory of Resignation and Precept of Sasine also.

for Payment of a Penny *Scots* Money at the Feast of *Whitsunday* yearly, on condition that the same is required. And for obtaining the aforesaid Infeftment by Resignation, I the said *A* make and constitute, &c. to resign, &c. all and whole the forementioned Annualrent of eight hundred Pounds, or such an Annuity, less or more, as shall be answerable to the above said principal Sum of sixteen thousand Pounds, to be uplifted at the Terms above mentioned, forth of the Lands, Barony, and others above denominated, or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Profits of the same; together with all Right, &c. *In the hands* of the said *B* his immediate Superiors of the forementioned Lands and Estate, or of their Commissioners having Power to receive Resignations on their Behalf; *In favour*, and for new Infeftment thereof to be granted to the said *C*, his Heirs or Assignies, heritably, and under Reversion in manner afterwards set forth: And thereupon acts, &c. *Further*, I hereby make and constitute the said *C*, his Heirs or Donatars (secluding his Executors) my Cessionaries and Assignies, in and to the above mentioned principal Sum of sixteen thousand Pounds, and to the Sum of two thousand five hundred Pounds of liquidated Expences, contained in the Bond above rehearsed, with the Annualrents of the aforesaid principal Sum resting since —, and in time coming during the not Redemption, together with the termly Penalties incurred through the untimely

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Payment of the same ; and to the Sum of ——— over and above, being the Amount of my Account of Expences in accomplishing the Infeftment after mentioned, with all Action, &c. *In the same manner*, I transmit and make over to them the aforefaid Bond it felf, and the Instrument of Safine enfuing upon it, dated, &c. and regiftred, &c. (a), together with the whole Claufes, Articles and Contents of the forementioned Writings, and all that hath followed or may follow on the fame (b); *furrogating and fubftituting* the faid

(a) *Add*, with the Charter of Confirmation of the above faid Infeftment, bearing Date, &c. *if the Cedent was infeft upon the Precept of Safine in the Bond, and if the Infeftment was confirmed by the Superior. But fay*, — the aforefaid Bond it felf, and the Charter of Refignation enfuing upon it, of Date, &c. with the Instrument of Safine proceeding upon the above faid Charter, dated —, and regiftred —, *if the Cedent perfected his Infeftment by Refignation.*

(b) *In a Cafe like that mentioned in the firft Note, where a Part of the principal Sum is paid, and a proportional Part of the Annuity renounced, the Affignation to the Remainder runs thus*: — In and to the Sum of eight thoufand Pounds, only refting of the above mentioned principal Sum of fixteen thoufand Pounds: And to the Annualrents of the faid remaining Sum refting fince the Term of —, and in all time coming during the nor Redemption; together with a proportional Part of the Sum of two thoufand five hundred Pounds of liquidated Penalty, and a like Proportion of the termly Failzies fet forth in the Bond above expreffed; and in and to the aforefaid Bond it felf, and the Instrument of Safine enfuing thereon, dated, &c. and regiftred, &c. with the whole Claufes and Articles thereof, and all that hath followed, &c. in fo far only as may be extended to the Sums hereby affigned: So that the before mentioned Bond and Safine are from this time forward to be re-
ftricted

faid C in my full Right and Place of the Premises for now and ever: With Power to him and his above named to intromit with and uplift, and, if need be, to sue for the Sums of Money above assigned; to grant Acquittances and Renunciations on Payment, which shall be sufficient to the Receivers; and generally, to do every other Thing in relation to that Affair that I might have done my self before the granting hereof. Which Disposition and Assignment respectively above written, I the said A bind and oblige my self, my Heirs and Successors, to warrant from my own proper Facts and Deeds, done or to be done, in prejudice thereof. *Moreover*, I have herewith delivered up to the said C the Writings of Investiture above rehearsed, to be kept and used by him and his aforesaid as their own proper Evidences for the Time to come. *Lastly*, I desire and require you, &c. [*Precept of Sasine*] and that this on no account ye leave undone; the which to do I commit to you, jointly and severally, my Bailies in that Part, full Power by this my Precept: Provided however that the forementioned Annualrent be redeemable [*The Clause concerning the Redemption may be copied out from the Bond, or it may be still referred to, thus*] from the said C, and his above named in manner prescribed by the heritable Bond above narrated. [*Registration, &c.*]

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stricted to eight thousand Pounds of Principal, an Annualrent of four hundred Pounds, and to a proportional Part of the liquidated Penalty and termly Tailzies above rehearsed. *Summarizing, &c.*

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When Infeftments of Annualrent are oftner than once transferred, the second, third and all posterior Conveyances, though in a fourth or fifth Degree of Distance from the Assigny, are differenced by the Title of *Dispositions* and *Translations*: In the Stile whereof there is nothing singular that may not be gathered from the following Hints: *1mo*, In narrating the Bond, you ought also to give a short Detail or Narration of the several Conveyances that have been made of it. *2do*, In that Clause of the Assignment where the Bond is conveyed, the Progress thereof ought also to be recapitulated and set over, and the same should be delivered up with the Bond. *3tio*, When the Transferrer derives Right either from a Confident or by Succession, he should warrant the Conveyance against the Facts and Deeds of his Author or Predecessor, as well as his own.

2. Disposition of a proper Wadset.

K NOW ALL MEN, *That I A, Considering* that *B*, by a Contract of Wadset betwixt him and me on the one and other Sides, of Date —, made over to me, my Heirs or Assignies, heritably and under Reversion, in manner therein specified, all and singular the Lands and others hereafter denominated, engaging himself to vest and seise us in the same in manner therein related; and that these Lands being accordingly resigned to the Barons of his Majesty's Court of Exchequer, I obtained a Charter under the Seal appointed

pointed by the Treaty of Union to be used in Scotland in place of the Great Seal anciently kept there, which Charter is dated, &c. and was registered in the Register of the Great Seal upon the — Day of —, — Years; and in pursuance of the Precept of Sasine contained in this Charter, I was, upon the — Day of — thereafter, infeft and seised in the particular Subjects therein and afterwards enumerated, as in the Instrument of Sasine relative to the above Infeftment, and in the rest of the Investiture before recited, at greater Length is set forth; *And also considering* that C hath made payment to me of the Sum of ten thousand Pounds Scots Money, with the Interest thereof since *Whitsunday* One thousand seven hundred and thirty two Years, of which I hereby acquit him, his Heirs and Executors, for now and ever: *Know all Men*, I say, That therefore I have sold and disposed, and at this present sell and dispoise, to the said C, his Heirs, &c. heritably, and under Reversion in manner after mentioned, all and whole [*Copy out the Lands, &c. from the Contract,*] together with all Right, &c. *Further*, I the said A engage my self, my Heirs and Successors, to infeft and seise the said C and his before named, in the Lands and others above disposed, heritably; and that by two several Infeftments, &c. [*forma communi.*] And for effectuating the above said Infeftment by Recognition, I hereby make and constitute, &c. to assign, &c. in due and competent Form: Providing always, as it is hereby provided and declared,

red, and appointed to be annexed to the Infeſtment enſuing hereupon, That the before mentioned Lands and Eſtate ſhall be redeemable by the above *B*, his Heirs or Aſſignies, from the ſaid *C* and his above named, upon payment, £3*c.* in Manner and upon the Premonition ſet forth in the above ſaid Contract: And thereupon, Acts, £3*c.* *Moreover*, I bind and oblige my ſelf and mine aforeſaid, to relieve the ſaid *C* and his above written, of all Aſſeſſments, Supplies, Feu, Blench or Tithes Duties, and of all other publick Burdens whatever accruing due on the Lands and others before deſigned, ſince the time at which I began to poſſeſs the ſame, to the Term of *Whitſunday* next to come, which is hereby declared to be the time at which the ſaid *C* his Entry doth commence. *Furthermore*, I make and conſtitute the ſaid *C*, his Heirs and Donatars (ſecluding his Executors) my Ceſſionaries and Aſſignies, in and to the principal Sum of ten thouſand Pounds *Scots* Money, and to the penal Sum of two thouſand Pounds, mentioned in the Contract already rehearſed, with the Sum of ——— beſides, being the Charges expended by me in accompliſhing the Infeſtment above related, which is alſo payable before the Redemption can be challenged; and alſo, in and to the forementioned Contract, Charter and Saſine themſelves, with the whole Heads, Articles and Clauſes thereof, and all that hath followed or may follow on the ſame. *At the ſame time*, I aſſign and transfer to them the Rents and Duties of the ſpecifick Subjects above diſponed, of the

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Crop and Year of God One thousand seven hundred and thirty two, and in time coming during the not Redemption, with all Action, &c. *Besides*, I transmit and make over in their favour the several Tacks and Locations of the before mentioned Estate, standing betwixt me and the present Tenants and Possessors thereof, and that for all the Years and Terms they may have yet to run before the Redemption, with the Tack-duties, Penalties and other Emoluments accruing therefrom, and all Suit and Action competent to me for the Recovery thereof: *Surrogating* and *substituting* the said C in my full Right and Place of the Premises, for now and ever: With Power to him and his aforefaid, under the Condition of Reversion already mentioned, to enter to the Possession of the above said Estate; to remove and put in Tenants; to intromit with and receive the Rents and Duties, or to call for and uplift the Sums of Money above assigned, and if need be, to use Requisition and all manner of Diligence for obtaining Payment thereof; to grant Discharges and Renunciations upon Payment, either in whole or in part, which shall be sufficient to the Receivers; and generally, &c. Which Disposition and Assignment respectively above written, I the said A bind and oblige my self and mine aforefaid to warrant, &c. And in testimony thereof, I have herewith delivered up to the said C the Writs of Investiture above assigned, to be kept, &c. *Finally*, I desire and require you, &c. [*Precept of Sasine,*] redeemable always and under

der Reversion, in manner above rehearsed : And that this on no account ye leave undone, &c. [*Registration, &c.*]

The Stile of a Disposition of an improper Wadset is much the same with that of a proper one. If there is any Difference at all worth the mentioning, it is this : Where an improper Wadset-ter, not desirous to enter to the natural Possession of the Wadset-lands, sets them in Tack to the Granter of the Wadset, for payment of the Interest of his Money, in place of the Tack-duty, the Conveyance ought not to contain an Assignment to the Rents and Duties of the Lands, and to the Tenants Tacks then current, nor should it bear an Obligation to relieve the Assigny of the publick Burdens affecting the Estate at the time of his Entry ; but instead of these three Clauses, it ought to contain an Assignment to the principal Sum, the liquidated Penalty, the Annualrents or Tack-duties, and the termly Failzies, &c. as you have the like Assignment exemplified in the Transmission of an Infestment of Annualrent ; where the Clause, *With Power, &c.* is the same with that you should observe in the Case I am here speaking of.

With respect to the Transmission of Adjudications upon which Infestment hath followed, it is to be adverted, whether the legal Reversion competent to the Debtor is expired or not : For if it is, the Disposition does not contain a Narration of the Diligence and Grounds of Debt, but is like that

that made by an irredeemable Proprietor of Lands; whereas if the Reversion is not expired, it is very proper the Diligence should be narrated. Take this Example.

3. *Disposition of an Infestment on an Adjudication.*

BE IT KNOWN to all Men, *That I A, In regard* that the deceased *B*, by his Bond dated —, bound and obliged himself, his Heirs and Successors, to have paid to *C*, his Heirs or Assignies, at the Term of *Martinmas* then next to come, the Sum of six thousand Pounds *Scots* Money, under the Penalty of one thousand two hundred Pounds in case of Failure, with the ordinary Annualrent of the principal Sum from the Date of the Bond during the not Payment of the same, as the above Bond, registred in the Books of Council and Session upon the — of, &c. more fully relates: To which Bond, with the Sums of Money, Principal, Annualrents and liquidated Penalty therein contained, the said *C*, by an Assignment dated, &c. made and constitute me, my Heirs and Donatars, his irrevocable Cessionaries and Assignies, as this Assignment also more fully relates: Upon which Assignment I obtained a Decree before the Lords of Session upon the — of — last, against *D*, Heir-apparent to the said deceased *B* his Father, decerning him, on account of the passive Titles therein mentioned, to make payment to me of the principal Sum and liquidated Penalty above expressed, and of the Annualrents

nualrents of the principal Sum resting since, &c.
 and in time coming during the not Payment: Up-
 on this Decree I raised Letters of Horning against
 D, and having caused charge and denounce him
 to the Horn in manner represented in the above
 said Letters and Executions thereof, I afterwards
 raised Letters of special Charge to enter Heir,
 and agreeably to these Letters, caused charge him
 to enter Heir in special to his deceased Father, in
 terms of the Act of Parliament in that behalf:
 Besides, I commenced a Process of Adjudication
 before the Lords of Session against the above D,
 on which Dependence I first raised Letters of In-
 hibition, and executed the same against him; and
 having next insisted in the Pursuit of the above
 said Action, I obtained a Decree, adjudging the
 Property of all and whole [*Transcribe the Lands,*
&c. from the Decree] to pertain to me, my Heirs
 or Assignies, in payment of the Sums of Money,
 Principal, Annualrents and liquidated Expences
 therein contained, extending at the Date thereof
 to the Sum of eight thousand Pounds *Scots* Mo-
 ney, and of the Annualrent of this accumulated
 Sum from that time forward during the not Re-
 demption, and that besides the Composition to the
 Superiors, and the Expence of the Infestment to
 follow thereon, as in the said Decree, dated, &c.
 and in the Abstract thereof, recorded, &c. at
 greater Length is contained: Pursuant to which
 last mentioned Decree, I likewise obtained from
 E, Superior of the above said Estate, a Charter
 of Adjudication, bearing date, &c. and in conse-
 quence

quence thereof, was on the ——— Day of ———
 infest and seised in the Lands and others appro-
 priated to me as above, as the Instrument of Sa-
 fine relative to this Infestment, registred, &c. more
 largely sets forth (a) : *And in regard* that F hath
 made payment to me of a certain Sum of Money
 equivalent to those hereafter assigned, whereof he
 is hereby exonerated for now and ever : *Be it*
known, I say, That for this Reason I have sold
 and disposed, and at this present sell, &c. to the
 said F, his Heirs or Assignies, heritably, under
 Reversion in terms of the Act of Parliament in
 that behalf, all and singular the before mention-
 ed Lands of ——— ——— ———, with the Hou-
 ses, &c. all lying and bounded in manner above
 expressed; together with all Right, &c. *Further*,
 I engage my self, my Heirs and Successors, to
 vest and seise the said F and his before named,
 on

(a) *But if the Subjects adjudged are held of different Superiors, the several Infestations ought to be specially narrated, in this manner : ——— Pursuant to which last mentioned Decree, I obtained a Charter of Adjudication under the Seal that hath now come in place of the Great Seal, which Charter is dated, &c. and was recorded, &c. in consequence whereof I was on the ——— Day of ——— infest and seised in the aforesaid Lands of A, with the Pertinents; as in like manner, agreeably to another Charter, bearing date, &c. granted to me by G, I was on the ——— Day of ——— seised in the forementioned Lands of B; and in conformity to the above said Decree, I was also invested with the Tenements of Land and others above mentioned, lying within the Territory of the Burgh of C, as the several Instruments of Safine relative to these Infestments, altogether duly registred according to the Direction of the Act of Parliament, more fully relate.*

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on their own Expences, in the Lands and others above disposed, with the Pertinents, and that by two several Infeftments, &c. (a). And for accomplishing the above said Infeftment by Resignation [*Procuratory of Resignation in common Form.*] Moreover, I make and constitute the said F, his Heirs and Donatars, my Cessionaries and Assignies in and to the aforesaid extended Sum of eight thousand Pounds, with the Annualrents thereof hitherto remaining unpaid, since the Term of —, and in time coming during the not Payment; and to the said Bond and Assignment themselves, with the Decree of Constitution, Letters of Horning and Inhibition ensuing thereon, Executions, Indorsations and Registrations thereof; and likewise to the said Decree of Adjudication and Breviary thereof, with the Investiture above rehearsed ensuing on the same, and all that hath followed, &c. as also, in and to the Rents, Revenues and Casualties

(a) *In the Case mentioned in the preceeding Note, where the Subjects adjudged are supposed to be held by different Tenures, the Clause of Infeftment is in this Form: In the which Lands, Tenements and others above disposed, I engage my self, &c. to vest and seise the said F and his before named, on their own Expences, in manner under written, namely, in the Tenements of Land and others lying within the Boundaries of the Burgh of C, by Resignation thereof to the Magistrates of that Burgh, as to our Sovereign Lord the King, my immediate Superior of the same, to be holden in free Burgage, for performance of the Duties and Services appropriated to that kind of Holding; and in the whole other Particulars above enumerated, by two several Infeftments, &c.*

N. B. *The burgal Tenements ought not to be inserted in the Precept of Sasine.*

ties of the forementioned Lands and Estate of all the Crops and Years that have passed since the Time of the Date of the above mentioned Adjudication, and in time coming during the not Redemption; with all Action, &c. *Surrogating, &c.* With Power to him and his aforesaid to enter to the Possession of the before mentioned Estate; to remove and put in Tenants; to intromit with and receive the Rents and Duties, or to call for and uplift the Sums of Money, above assigned; and, if need be, to sue therefore either in my Name or their own as they have a mind; to grant Acquittances and Renunciations on Payment, which shall be sufficient to the Receivers; and generally, &c. Which Disposition and Assignment respectively above written, I bind and oblige myself and mine aforesaid to warrant, &c. *Furthermore*, I have herewith delivered up to the said F an Extract of the Bond, with the whole other Writings above narrated, to be kept, &c. *Lastly*, To the Effect he may be presently invested with the Lands and others above denominated, I the said A desire and require you, &c. [*Precept of Sasine, Registration, &c.*]

To conclude upon the whole: It was observed in the Close of the foregoing Title, that the Property of the Fee is always understood to remain with the Superior till such time as the Vassal hath completed his Right by Infeftment. It may in the same manner be observed in this, That the Disposer is never understood to be thorowly divest-

divested of the Subject transmitted, till such time as the Disponee is invested with the real Right of it; and consequently that the Wife will have Right to the Terce of the Lands disposed by her Husband, wherein the Disponee was not infeft before the Disposer's Death: For the Husband dying last vest and seised in the Fee of such Lands, his Relict, it may well be thought, is intitled to a Terce of them, as of a Subject to which he had still the complete real Right vested in his Person at the time of his Death. What I would thence infer is, That the Disponee should lose no Time in getting his Right realized by Infeftment, a Caveat for this as well as divers other Reasons particularly to be regarded.



T I T. III.

Concerning Contracts, or mutual Obligations and Conveyances.

A CONTRACT is, *An Agreement betwixt two or more Persons, inducing an Obligation by its own Nature.*

The most material Parts of a Contract may be summ'd up into two Heads: The one relates to the State and Circumstances of the Parties contracting;

tracting; and the other concerns the Subject-matter of the Contract.

First, for the Parties contracting: The Contract must be entred into with Knowledge and with Freedom; for if one covenanting hath not a reasonable Knowledge of the Matter transacted, which may be occasioned by some substantial Error, or through some natural Infirmary; or if he wants Freedom and Liberty through violent Force or just Fear; or if he wants a Capacity to adhibit a just Consent: In either of these Cases the Contract may be annulled. So that some are simply incapable of contracting, as married Women, and those who want the free Use of their Judgment, &c. and others cannot contract to their Prejudice, as Persons under Age, &c.

Secondly, The Subject-matter of a Contract must be something or other in Commerce that will admit of an Obligation; that is, it must neither be unlawful nor impossible. All Contracts are reckoned lawful and permitted, that neither transgress the Rules of Law nor good Manners; and these only are accounted impossible which are physically so: For an Obligation by one to do what is not in his Power to perform, if it might be done by another, is effectual, in so far as the Obligant is liable for the Value; whereas an Obligation against the Laws of Nature hath no such Effect.

The Engagements which form Contracts are various, according to the Designs and Undertakings of Men, which cannot be circumscribed.

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Hence it is that some Covenants are single, binding upon one Side, or upon one of the Parties only; some reciprocal and obligatory upon both Sides; and others divided into three, four, or more Parts, according to the Number of the Parties contracting together. But those I design to handle at this Time are, *Contracts concerning the Sale of Lands, of Excambion or Permutation, of Wadset, and of Marriage.*

S E C T. I.

Of Contracts concerning the Sale of Lands.

IT is not for the Interest of the Parties to enter into an Agreement of this sort, if they can do otherwise; because such Contracts many times become the Ground of a Plea betwixt them: However, when there is a kind of Necessity for doing so, as in a Case where the Seller hath not the Evidences of his Right at hand, so as to avouch his Title to the Purchase at the Time the Bargain is struck up, the Inconveniency may in a good measure be guarded against, by naming an Arbiter or two for determining all intervening Impediments that threaten to obstruct the Performance on either Side. This Caution is observed in the following Instance.

AT EDINBURGH the first Day of *April* One thousand seven hundred and thirty three Years,

Years; It is covenanted and agreed betwixt *A* heritable Proprietor of the Lands and others after mentioned, on the one Part, and *B* on the other, in manner following: *That is to say*, The said *A* hath bound and obliged himself, his Heirs and Successors, to dispoſe and make over to the said *B*, his Heirs or Assignies, heritably and irredeemably, all and whole [*Here the Lands, &c. are named and designed,*] with the Houses, Biggings, Yards, Orchards, Parts, Pendicles and Pertinents thereof, all lying, &c. together with the parsonage and vicarage Tithes of the above said Lands, and all Right and Interest he either hath or any way can challenge to the same. And for this Purpose the said *A* likewise obligeth himself and his above named, against the ——— Day of ——— in the ensuing Year One thousand seven hundred and thirty four, not only to grant and deliver to the said *B* and his above written, an absolute and irredeemable Right and Disposition of the before mentioned Subjects, containing a Clause of Infestment of both Kinds, *a me* and *de me*, a Procuratory of Resignation, Precept of Sasine, Clause of absolute Warranty both as to Stock and Teind, Assignment to the Writs and Evidences of the Acquisition, and also to the Rents and Duties of the same, for the Crop and Year of God ——— and in all Time thereafter, with such other Clauses and Obligements as shall be thought necessary to establish the Transmission; and at the same time to deliver up therewith the Evidences of his Title so to be assigned,

amounting, at least, to a full and complete Progress: But also, to rid and acquit the above mentioned Purchase of all Taxes, Supplies, Feu, Blench and Tithe Duties, and of every other publick and real Burden whatever wherewith the same shall be incumbered at the Term of — next to come, being the Time from which the said *B* his Possession doth commence. *On the other hand*, the above *B* hath instantly made Payment to the said *A* of the Sum of ten thousand Pounds *Scots*, and engageth himself, his Heirs and Successors to pay to him, his Heirs or Assigns, such another Sum, as, being added to that presently paid in, shall be tantamount to twenty Years Purchase of the Subject, Stock and Teind jointly included; and that at the aforesaid Term of —, with a Fifth-part of this last mentioned Sum of liquidated Penalty, in case of his Failure, besides the Interest thereof so long as the same shall remain unpaid after the Term of Payment above assigned. In order however to ascertain the Value of the above said Acquest, so as to commensurate the Extent of the Price resulting from thence, according to the Rule above prescribed, it is enacted, That the Rental or Scheme by which the Estimation is to be formed, shall be avouched either by the current Tacks of the Estate, or by the Tenants Payments for a Course of three Years backwards; That no other Species of Rent besides Victual and Money, nor no other publick Burden besides the Cess, shall be brought into the Computation; and that in ra-

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ting the Victual, the Bear and Oats are to be computed at five Pounds, and the Wheat at eight Pounds the Boll. *Moreover*, the forenamed Parties have agreed to refer, as they, at this present, submit and refer the adjusting of all Jars and Differences that may fall out betwixt them, concerning their mutual Engagements to one another in relation to this Agreement, to the Determination of *C* and *D*, Umpires chosen for that end on both Sides; whose Power of deciding the Controversy is to continue till such time as these Articles are thorowly accomplished, and by whose Decision, in the supposed Event, the Submitters are to be absolutely determined. *Lastly*, Both Parties engage themselves and their aforesaid, to perform their respective Parts of the Premises to each other, under the penal Sum of — in case of Failure, to be paid by the Party failing to the other Party, over and above Performance. And they consent to the Registration hereof in the Books of Council and Session, &c. and if need be, &c. In Testimony whereof they have subscribed this Contract, consisting of this and the two preceeding Pages (written on stamped Paper by *E*) at the Time and Place above mentioned (*a*), before these Witnesses, &c.

S E C T.

(*a*) Concerning the Clause of Subscription and witnessing of Writs, see Spottiswood's *Introduction to Stiles*, &c. in fine.

S E C T. II.

Of Contracts of Excambion.

EXcambion or Permutation is, *A Contract by which one Estate or Thing is given in Exchange for another*: As in the following Example.

AT, &c. It is contracted and agreed betwixt *A* and *B*, on the one and other Parts, in manner following: *That is to say*, Forasmuch as the above named Parties have judged it to be for their mutual Interests to make the Transaction under written, the said *A* hath therefore sold and disposed, and at this present, on the Conditions after specified, sells, &c. to the above *B*, his Heirs or Assignies, heritably and irredeemably, all and whole [*Describe the Lands,*] together with all Right, &c. As on the other hand, the said *B*, in consideration thereof, and of the Sum of five hundred Pounds *Sterling* over and above, instantly paid in to him by *A*, whereof he hereby grants the Receipt, renouncing all Exceptions to the contrary; hath also sold and disposed, and at this present, on the Conditions after mentioned, sells, &c. [*ut supra.*] Further, Both the said Parties engage themselves, their Heirs and Successors, on their mutual Expences; to infest and seise one another in the Lands and others alternately disposed to them as above, absolutely and irredeemably,

ably; and that by two several Infeſtments, in due and competent Form: The one thereof to be holden of the Diſponer and his above named in free Blench, for Payment, &c. and the other of theſe Infeſtments to be holden of the ſaid *A* and *B* their reſpective Superiors of the before mentioned Subjects, by the ſame Tenure that they preſently hold of them themſelves. And for perfecting the above ſaid Infeſtments by Reſignation, the ſotenamed Parties hereby make and conſtitute, &c. to reſign and ſurrender, as they, at this preſent, interchangeably reſign, &c. the Lands and others above enumerated in the following manner, namely, the ſaid *A* in the *firſt* Place, reſigns and gives up all and whole, &c. *In the hands, &c. In favour, &c.* as the ſaid *B* in the *ſecond* Place, alſo reſigns and gives up all and ſingular, &c. *In the hands, &c. In favour, &c.* heritably and irredeemably, in due and competent Form: It is however covenanted and decreed, *That* if either of the Eſtates above reſigned, or any Part thereof, ſhall happen to be evicted, on account of any Fact or Deed of the Reſigner's, or of a Defect in his Title; in that Caſe, this Contract and the Inveſtiture enſuing upon it, ſhall forthwith fall to the Ground, and be of no manner of Efficacy whatever; and from that time forward, it ſhall be allowable for the Party diſtreſſed to recur to and reaſſume the Poſſeſſion of the Eſtate exchanged with that which is ſo evicted from him, *pro-ut de jure*; and that the Action for this Purpoſe, as well as that for Reſtitution of the foremen-
tioned

tioned Sum of five hundred Pounds *Sterling*, shall be competent to, as well as against, the Heirs and singular Successors of the Parties contracting: *That* how soon the Action threatening the Ejection is commenced, the Party whose Right is called into question shall be holden to intimate the same to the Guarantee, some time or other, at furthest, before Litiscontestation be made in the Cause; and in the *interim*, to deliver up to him the Writs and Evidences of the controverted Subject for the Support of his Title: And thereupon, Acts, &c. Moreover, the said *A* and *B* bind and oblige themselves, reciprocally, their Heirs and Successors, to warrant and maintain the specifick Subjects alternately disposed by them in manner above expressed, to be good and sufficient to the Party Receiver and his above named at all hands, &c. and also, to acquit and disburden the same of all Feu, Blench and Tithe Duties, Supplies, &c. with which they shall be affected at the Term of — next to come, being the Period of Time from which their respective Possessions do commence. Besides, the forenamed Parties make and constitute each of them the other and his aforesaid, his Cessionaries and Assignies, in and to all and singular Charters, &c. granted to the Cedent, his Authors or Predecessors, in relation to the Estate passed over on his Side of the Contract, and all that hath followed, &c. and in like manner, in and to the Rents and Duties, &c. [*And so forth as to the other Clauses.*]

N. B. The Proviso's mentioned in the foregoing

ing Articles are rather superfluous than necessary; because, though they are constantly observed, they are implied in the Nature of the Exchange-Contract without an exprefs Stipulation.

The following Contract being much of a piece with that which goes before, very fitly challengeth a Place in this Section.

Contract relating to a mutual Tailzie betwixt two Brothers.

A T, &c. It is appointed, contracted and finally ended betwixt *A* on the one Part, and *B* his Brother on the other Part, as follows; *To wit*, the said *A* and *B*, for the Love and Esteem they bear to one another, and for divers other Reasons inducing them to do so, have become bound and obliged, as they at this present, on the Condition after mentioned, bind and oblige themselves, and their Heirs, as well male, &c. To resign their respective Lands and Estates under written, and all other Lands and Hereditaments of whatever kind, presently pertaining to them, or that they shall either acquire or succeed to at any time hereafter; in favour of the Resigner himself and the Heirs-male of his Body, which failing, in favour of their particular Heirs of Tailzie and Provision after named. And for that End the forenamed Parties have made and constitute, &c. to resign, as they at this present interchangeably resign and surrender their respective

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Lands and Estates after mentioned, in the following manner, *viz.* The said *A*, on the one hand, resigns and gives up all and singular [*Insert the Lands, &c.*] and all other Lands, Baronies, Tithes, Mills, Woods, Fishings, Tenements, Annualrents, and Hereditaments of whatever Denomination, presently belonging to him, or that he shall either acquire or succeed to at any time hereafter; dispensing with the Generality of this Resignation, and admitting the same to be as effectual as if the Particulars generally mentioned were specially rehearsed; together with all Right, &c. *In the hands, &c. In favour* and for new Infeftment of the same, to be made and granted to the said *A*, and the Heirs-male of his Body; which failing, to the Heirs-female of his Body, the eldest Daughter succeeding always without Division; which failing, to the said *B*, and the Heirs-male of his Body; which failing, to the Heirs-female of his Body, the eldest Daughter having still the Preheminence, and succeeding without Division; and all these failing, to the said *A* his own nearest Heirs or Assignies whatsoever, absolutely and irredeemably: *As on the other hand*, the said *B* resigns and gives up [*verbatim as above, the Parties Names being only inverted,*] in due and competent Form: It is however covenanted and decreed, and appointed to be expressed in Investitures ensuing hereon, That although it is not allowable for the said *A* and *B*, or the Heirs of their Bodies, by any fraudulent or gratuitous Deed, to invert the Order of Succession

cession hereby established; yet it is not at all disallowable for them to burden each his own Estate with the Payment of whatever Sums they shall think fit; nor are they even to be restrained from alienating such Parts and Portions thereof as they have a mind, provided the Cause is either onerous or rational; And thereupon, Acts, &c. Moreover, the said *A* and *B* assign and make over to their specifick Heirs of Entail above designed, all and singular Charters, Dispositions, Precepts and Instruments of Sasine, Procuratories and Instruments of Resignation, Adjudications, Infeudments of Annualrent, Wadset-rights, Reversions, Instruments and Orders of Redemption, Declarators obtained or depending thereon, and all other Evidences and Securities whatsoever granted to them, or that may be conceived in their favour at the time of their Death, with respect to the Lands, Baronies, and other Hereditaments particularly and generally above expressed, and all Sums of Money, Principal, Annualrents and Penalties, contained in the before mentioned Writings, or due in virtue thereof; dispensing also with the Generality of this Assignment, and admitting the same to be as effectual as if the Particulars had been severally enumerated: And *surrogating* and *substituting* their respective Heirs of Tailzie and Provision above named, on the Condition already mentioned, in their full Right and Place of the Premises for ever. [*Registration, &c.*]

S E C T. III.

Of Contracts of Wadset.

A Wadset is defined to be, *A Right, whereby Lands, or others passing by Infeftment, are impignorated for the Security of a special Sum.*

Wadsets are twofold, to wit, proper and improper. A proper Wadset is that, *by which the Wadsetter, taking his hazard of the Rent of the Lands for the Interest of his Money, is bound to pay the publick Burdens.* And an improper Wadset is that, *by which the Granter is bound to pay the publick Burdens and to uphold the Rent, the Receiver running no hazard, but having his Annualrent secured to him in all Events.* The following Specimen exemplifies both.

A T, &c. It is agreed and concluded betwixt the Parties following, to wit, *A* heritable Proprietor of the Lands and others after mentioned on the one Side, and *B* on the other, in manner under written; *That is to say,* In as much as the above *B* hath instantly made Payment to the said *A* of the Sum of three thousand Pounds Sterling, whereof he hereby grants the Receipt, renouncing all Exceptions to the contrary: Therefore this *A* hath sold and disposed, and, at this present, sells, &c. to the same *B*, his Heirs or Assignies whatsoever, heritably, under Reversion

sion in manner after specified, all and whole these his Lands of [*Describe the Lands, &c. as they are denominated in the Disponer's Infeftments,*] together with all Right, &c. In the which Lands and others above written, the said *A* engageth himself, his Heirs and Successors, on their own Expences, to vest and seise the above *B*, and his before named, heritably ; and that by two several Infeftments and Manners of Holding : The one to be held of the Granter of the Wadset and his Heirs in free Blench, for Payment of a Penny Scots Money at the Feast of *Whitsunday* yearly, on condition that the same is required ; and the other to be held of his immediate Superior of the Wadset-lands, by the same Tenure, and as freely in every Respect as he presently holds of him himself. And for effectuating the above said Infeftment by Resignation, the said *A* hereby makes and constitutes, &c. to resign, &c. heritably and under Reversion in manner after mentioned ; and thereupon, Acts, &c. Which Lands and others above designed, with the Pertinents, the said *A* binds and obliges himself and his aforesaid, to warrant to the said *B* and his above named, at all hands, &c. during the not Redemption : *As also*, to rid and disengage the same of all Feu, Blench and Tithe Duties, Supplies, &c. with which they shall be incumbered at the Term of *Whitsunday* next to come, being the Time at which the said *B* his Entry doth commence. *Further*, If it shall please the above *B* to hold the Infeftment *de me* of the Granter, in that

that case the said *A* obligeth himself and his before named to receive him, his Heirs or Assignies, from time to time, Vassals to them in the same, and that *gratis*, without any Composition or Gratuity to be paid on that account; and also, to dispoſe in their favour, likeas now as then, and then as now, he, for himself, his Heirs and Successors, assigns and dispoſes to them the Casualties of Relief, Non-entry, Liferent Escheat, and all other Casualties whatever, that shall happen to fall in their Hands as Superiors of the fore-mentioned Estate during the not Redemption thereof, and that likewise *gratis*. *In the same manner*, he transmits and makes over to them the whole Rents, Revenues and annual Profits of the above said Lands and Estate, accruing due for the Crop and Year of God ——— and in time coming during the not Redemption, with all Action, &c. *surrogating* and *substituting* the said *B* in his full Right and Place of the Premises during the before mentioned Space: Which Assignment he binds and obligeth himself and his aforesaid to warrant against his own proper Facts and Deeds done or to be done in prejudice thereof (*a*). Moreover, as it is agreed on the one hand,

(*a*) Thus far you may proceed whether the Wadset is proper or improper. It was formerly observed, that as improper Wadsetters are seldom desirous to enter to the natural Possession of the Wadset-lands, they ordinarily set the same in Tack to the Granter of the Wadset, for payment of the Interest of their Money in place of the Tack-duty: And this being one of the most eminent Characteristics of an improper Wadset, and wishal one that

and, that the said *B* is to take his hazard of the Rent of the Lands for the Interest of his Money, with-

that is more common and ordinary than the rest, I shall, for that Reason, confine my self to it alone, without taking notice of any other. In the Case then I am mentioning, you here break off from the Text, and write thus : On the other hand, the said *B* hath set, and in Tack and Affedation given out, as he at this present sets, and, for the Annualrent or yearly Tack-duty after specified, gives out to the said *A*, his Heirs or Assignies, the whole Lands, Baronies and others above denominated, for the Crop and Year of God above mentioned, and in all time thereafter during the not Redemption ; with Power to them to possess the same, and to dispose of the Revenues and Profits thereof, as independently in all Respects as the said *B* might have done himself, if he had retained the Possession in his own Hands : For which Reason the said *A* hereby binds and obliges himself and his above named, not only to make payment to the said *B* and his aforesaid of an Annualrent of one hundred and fifty Pounds *Sterling*, or of such an Annualrent as by the Laws of this Kingdom for the time shall be answerable to the above said principal Sum of three thousand Pounds *Sterling* ; and that at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, beginning the first Term's Payment at *Martinmas* next to come, for the Half-year's Annuity immediately preceeding that Term, and so forth thereafter at the Terms above expressed during the Continuance of the before mentioned Tack, with the Sum of — Money foresaid of liquidated Penalty for each Term's Failure in payment of the above said Tack-duty ; but also to satisfy and pay the Cess, Supplies, Feu duties, Ministers Stipends, and all other publick Burdens and Thraldoms whatsoever, wherewith the Subjects above rehearsed stand presently affected, or that shall at any time after this be imposed on the same before the Issue of this Affedation. It is however covenanted and decreed, That if the forementioned Tack-duty shall ever continue resting for two whole Years together, so as no Part thereof shall be paid at the last Term of Payment for the second Year, the aforesaid Location, in that case, shall become utterly void and

without Regard to the Bankruptcy of Tenants, to War, Famine, Pestilence, or any other Accidents falling in the Way; and that he is to satisfy the publick Burdens affecting the Estate from the time of his Entry, during the Continuance of his Possession; so, contrariwise, it is agreed, that he shall be intitled to the full Rents and Profits of the forementioned Lands and Estate, without any Abatement on account of the Excess wherein the same may happen to surmount the Interest of the aforesaid Sum, notwithstanding any Law or Statute to the contrary; the said *A*, for that end, hereby renouncing the Benefit of a Count and Reckoning, and of all Action and Suit he might have otherwise challenged on that score. *Besides*, in order to ascertain the Value of the Houses of the above mentioned Lands, so as to obviate any Controversy that may afterwards arise concerning their present Condition, it is enacted, That they shall be immediately surveyed and appretiated by four of the most skilful and experienced Men of the Neighbourhood, of which two are to be chosen by each Party; and that they shall be again surveyed, and their Value ascertained in the same Manner at the time of Redemption: By which last Estimation if it shall

and extinct, and from that time forward it shall be allowable for the said *B* to recur to the Possession of the above mentioned Subjects, and to expell the Reverser therefrom *prout de jure*; with the Burden of which Irritancy this Back-tack is granted and accepted, and no otherwise. *Furthermore, &c. Resume the Theme, beginning with the Clause of Requisition.*

be found they are of less Worth than what they appeared to be by the first, the said *B* shall be holden to repair and leave them in a Condition equally good with that wherein he found them at his Entry; whereas on the other hand, if they are in a better Case at the time of the second than at that of the first Valuation, the said *A*, before he can claim the Redemption, shall be holden to pay in to the Wadsetter the overplus Value, provided the Difference doth not exceed the Sum of four hundred Pounds *Scots*. Furthermore, at whatever Time the said *B* shall desire rather to have his Money returned than to retain the present Security, the said *A* engageth himself and his above named forthwith to make payment of the same (*a*), and that under the penal Sum of six hundred Pounds *Sterling* in case of Failure; Requisition being always made in the first Place, forty Days preceeding the Time at which he intends to have the Money called for. In the mean time, it is enacted, That no manner of Diligence, personal or real, ensuing on these Articles at any time hereafter, shall in the least weaken or invalidate the present Security, but that this Infestment, notwithstanding, shall continue in its utmost Force and Effect, till the Redemption is thoroughly accomplished. Lastly, the said *A* desires and requires you, &c. [*Precept of Sasine.*]
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Providing

(*a*) Say, and of the Annualrents or Tack-duties resting at the time, with the termly Failzies that have been incurred by the untimely Payment thereof, if the Reverser hath a Back-tack of the Wadjet lands.

Providing always, that the Lands and others above designed be redeemable by the said *A*, his Heirs or Successors, on payment to the said *B* or his above named, at *Whitsunday* next to come, or at any other Term of *Whitsunday* or *Martinmas* thereafter, of the above mentioned principal Sum of three thousand Pounds *Sterling*, and of the Expence he shall be put to in procuring an Infestment from the Superior by Resignation or Confirmation, or in doing Diligence for operating Payment of the aforesaid Sum, or in making Reparations on the before mentioned Houses, on condition that this last Article does not exceed the Sum above expressed allotted for that end (*a*); conform to an Account of the whole to be given in by them at the time of Redemption, without the least previous Premonition to be made for that purpose (*b*): And that this Contract, or an Extract

(*a*) If it is a proper Wadset. But in the Case mentioned in the foregoing Notes say: — on payment of the above mentioned principal Sum of three thousand Pounds, with the Annualrents or Tack-duties and termly Penalties resting at the time, and of the Expence he shall lay out in the Completion of this Right, or in obtaining Decrees for pointing the Ground, or in doing other Diligence, personal or real, for operating Payment of the before mentioned Sums; conform to an Account, &c.

(*b*) Or, conform to an Account of the whole to be given in by them at the time of Redemption, the Place appointed for that end being that particular Part of the New Session-house of *Edinburgh* where the Commissaries use to sit in Judgment, and the Consignation, in case of Absence or Refusal, to be in the Hands of the Dean of Gild or Treasurer of *Edinburgh*, on the

tract thereof, or of the Safine to follow upon it, shall serve as a sufficient Reversion for that Effect, notwithstanding any Law or Practice to the contrary. [*Registration, &c.*]

S E C T. IV.

Of Contracts of Marriage.

MArriage is, *A civil Contract, by which a Man and Woman are joined together till Death part them.*

The reciprocal Interests accruing to the Parties from this Society, in the real Rights and Estate of one another, (besides which nothing else is here aimed at,) are as follows.

Where the Woman is an Heiress, the Husband is sufficiently authorized to administrate and manage her heritable Estate, and hath Right to the Revenues and Profits of it while the Marriage lasts. This is called the *jus mariti*, and is a Faculty so inseparable from the Character of an Husband, that although it may be renounced by ante-nuptial Stipulations, yet it can hardly be restrained or past from during the standing of the

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the Peril of the Configner; Premonition being always made in the first Place to the said B, his Heirs or Assignies, personally or at their Dwelling places, in Presence of a Notary and Witnesses, forty Days preceeding the Term at which the Order of Redemption is intended to be used: And that this Contract, &c.

Marriage. The Husband hath also Right, for the Term of Life, to all Lands and Hereditaments to which the Wife succeeded either before or after the Marriage, and with which she was invested at the time of her Death; provided he have a Child by her that came alive into the World, though both she and the Child should die forthwith. This is called the *Courtesy of Scotland*; which is no more in effect than a Continuation as it were of the *jus mariti*, by a different Title, and under a new Denomination. The Courtesy takes place only in the Heritage to which the Wife succeeded as Heir; so that it is not extended to that acquired by a singular Title.

On the other hand, the Wife's Interest in her Husband's real Fortune, so long as the Marriage subsists, is dormant; but the Husband predeceasing Year and Day after the Marriage, or dying sooner, if he had a live-born Child by the Marriage, she hath Right to the *Terce*, that is, to the Liferent of a third Part of the immoveable Estate whereof the Husband died seised in the Fee, whether it came by Descent, or was acquired by singular Titles. The chief Subject of the *Terce* are Lands and Tithes vested by Infeftment, and Infeftments of Annualrent; for it does not extend to burgal Tenements, Feu and Blench Duties, or other Casualties of Superiority, nor to Tacks, Patronages or Reversions, because these are not the proper Subjects of an alimentary Provision, which it would seem is all the Law intended by the *Terce*: But this legal Liferent
does

does not take Place, except when there is no Contract or Agreement betwixt the Parties, whereby the Determination of Law would be set aside; for where the Wife is provided to a particular Settlement, she hath no Claim to the Terce, unless it is expressly reserved, because in that Case, as the Law phrases it, *provisio hominis tollit provisionem legis*.

The Law having made such ample and generous Provisions for the married Couple, it seems strange how Jointures and Marriage Settlements came to be so much in fashion as now-a-days we see they are. But what is still more wonderful in modern Settlements is, the Custom of entailing Estates on the first born, leaving it to the blind Decree of Fate to determine whether he is a Sot or a Man of Merit. By this means the Bridegroom gives out of himself the Opportunities of rewarding or discouraging his Children according to their Deserts, and not knowing which of them proves better or worse; settles on the eldest, be he perverse or ungrateful, impious or cruel, the Lump and Bulk of his Estate; at the same time he leaves each of the younger, be their Qualifications and Endowments never so many, but one Year's Purchase. Though this wise Institution might with a good deal of Justice be made the Mark of Satyr and Ridicule, yet as it is a little out of my Province to declaim against it, I must wave the Subject.

To return then from this Digression: The Marriage Articles are mainly divided into two Parts;

Parts; The one sets forth the Obligations on the Man's Side, and the other those on the Woman's. At this time I am to be limited and tied up to Marriage Settlements betwixt landed Persons, at least, where there is a Land-Estate on one of the Sides, as in the two or three following Models.

1. *Contract of Marriage.*

AT, &c. It is contracted and matrimonially concluded between *A* eldest Son and presumptive Heir to *B*, with the special Advice and Consent of his Father, and the said *B* for himself, and taking Burden on him for his Son, on the one Part; and *C* second Daughter to *D*, with the Advice and Approbation of her Father, and the said *D* for himself, with the Assent of his Daughter; and they both with one Accord on the other Part, in manner following: *That is to say*, The said *A* and *C* have accepted, as they at this present, with the Consent above mentioned, accept of each other for their lawful Spouses, promising and engaging themselves to consummate the Bond of Matrimony together with all the requisite Solemnities. *In Contemplation* of which Marriage, and in Consideration of the Marriage-Portion after mentioned, the said *B* binds and obliges himself, his Heirs and Successors, on the Conditions after specified, to invest and seise the above *A*, and *C* his promised Spouse in conjunct Fee and Liferent, and the Heirs-male of the Marriage; which failing, the said *A* his Heirs-
male

male whatsoever; which also failing, his Heirs or Assignies whatsoever, absolutely and irredeemably, in all and whole [*Here the Liferent Lands are named and designed;*] and also, to infest and seise the same *A*, and the Heirs-male of his Body by this Marriage; which failing, his other Heirs or Assignies above expressed, absolutely and irredeemably as was said, in all and whole the Lands and Barony of *E*, containing the several Towns, Lands, Mills, Tithes, and others under written, namely, [*Here the Particulars are enumerated,*] and that by two several Infestments and manner of Holdings in due and competent Form; the one whereof to be held of the said *B* and his above named, in free Blench, &c. And for accomplishing the forementioned Infestment by Resignation, the said *B* hath made and constitute, &c. to resign and surrender, as he at this present resigns, gives up and surrenders all and whole [*Repeat the Liferent Lands,*] together with all Right, &c. In favour, and for new Infestment thereof, to be reassigned to the said *A* and *C* in conjunct Fee and Liferent, and to the Heirs-male of the Marriage; which failing, the said *A* his Heirs-male whatsoever; which also failing, his Heirs or Assignies whatsoever, in Fee: *As also*, all and whole the above said Lands and Barony of *E*, comprehending the particular Subjects before enumerated, with all Right, &c. In favour of the same *A*, and the Heirs-male of his Body by this Marriage; which failing, of his other Heirs or Assignies above denominated, absolutely and irredeem-

redeemably, in due and competent Form: *Reserving* always to the said *B* the Liferent of the Manour-place, Office-houses, Gardens and Orchards of the aforesaid Barony, presently possessed by himself; and likewise of these Parts and Portions thereof hereafter particularized, to wit, [*Enumerate the Particulars.*] *Reserving also* to *F* his Spouse the Liferent of such of the before mentioned Subjects as are provided to her by their Marriage Settlement in the Case of her Survivance. *Again*, reserving to the said *B* a Power and Faculty at any time in his Life, & *etiam in articulo mortis*, to contract Debts on that Part of the aforesaid Barony whereof the Liferent is reserved to himself, and to burden the same with the Payment of whatever Sums he hath a mind, provided the Cause is not gratuitous, but necessary and onerous. *Besides*, it is enacted and decreed, That the said *A* and his above named shall be holden and obliged to satisfy the Debts, both personal and real, resting by the above *B* at the time of his Decease; especially the Sums to which he hath provided his younger Children, in terms of the several Bonds of Provision of this Day's Date granted to them concerning the same. And thereupon, Acts, &c. *Item*, The said *B* binds and obliges himself to warrant and secure the Lands, Barony and others above resigned, against all Facts and Deeds done or to be done by him at any time hereafter in prejudice of the present Settlement; and also, to extricate and acquit the same of all Supplies, &c. with which they shall be

be Incumbred at the Term of *Whitsunday* next to come, being the Time at which the said *A* his Possession is appointed to commence. *And in regard* that the said *B* hath retained to himself the Liferent of the one half of the forementioned Inheritance, it is therefore covenanted and agreed, That he and his forenamed Son shall be holden to relieve each other of their respective Halves of the above mentioned Duties, falling due for the Crop One thousand seven hundred and thirty two; and in time coming, during all the Days of the said *B* his natural Lifetime. *At the same time* it is conditioned, That in case the said *C* shall outlive her future Husband, and by that means attain the Possession of her Jointure-lands, she shall be holden from that time forward, to satisfy the Feu-duties, Taxations, and all other publick Burdens affecting the liferented Subjects from time to time, punctually as the same fall due; and that if she fails so to do, so as any particular Species of these publick Duties shall continue resting for two Terms together, it shall be allowable for the Fiar at the time to make Payment thereof, and to affect the readiest of the Rents and Profits of the Liferent Lands, after any Method he shall reckon most expedient for obtaining Repayment of the same. *Moreover*, the said *B* hereby makes and constitutes the said *A* and his above named, under the Reservations and Conditions above expressed, his Cessionaries and Assignies, not only in and to all, and singular Charters, &c. with all that hath followed or may follow there-

on; but also, in and to the Rents, Revenues and Casualties of the above said Lands and Barony of *E*, falling due for the Crop and Year of God before mentioned, and in all time thereafter. *In the same manner*, he assigns and makes over to the said *A* and *C* his future Spouse in conjunct Fee and Liferent, and to the Heirs-male of the Marriage, which failing, as aforesaid, the whole Rents, Duties and annual Profits of the before mentioned Lands of ——— ———, to which the said *C* is provided in Liferent, as is above related, and that of the Crop and Year above specified, and in time coming; with all Action, &c. *Surrogating and substituting* the said *A* and *C*, for their specifick Rights and Interests, in his full Right and Place of the Premises for now and ever. *And* because the said *B* inclines to retain the Rights and Securities above assigned in his own Custody while he is alive, he therefore engageth himself to make them forthcoming to his said Son and his above named, at whatever time they shall have necessarily to do therewith, on condition that they undertake to return the same, how soon the Exigency is over. *Further*, The said *B* desires and requires you, &c. [*Insert a Precept of Sasine suitably to the Clause of Infeftment,*] conform to this Contract and the Infeftments to follow upon it, or either of them; but always under the Reservations and Provisions above rehearsed, which are altogether holden as repeated and again expressed: And that this on no Account ye leave undone, &c. *Furthermore*,
the

the said *A*, with the Consent and Approbation above mentioned, hath become bound and obliged, to provide the one half of all Lands, Tenements, Annualrents, Wadset-rights, Adjudications, or other Heritage that he shall either acquire or succeed to while the Marriage lasts, to himself and his betrothed Spouse, or the longest Liver of them two in Liferent; and the whole of the aforesaid Acquests or Hereditaments, to the Heir-male of the Marriage; which failing, to the said *A* his other Heirs or Assignies above named, in Fee. *Withal*, in case the said *C* shall outlive her promised Husband, he transfers and passeth over to her the half of the household Plenishing and moveable Goods within his House at the Time of his Decease, after Deduction of the moveable Heirship; to be intromitted with and disposed upon at her Pleasure, free of all Debts and Burdens whatsoever. *Which* Provisions before mentioned in favour of the said *C*, she, with the unanimous Assent of her Father, accepts of in place of the Terce or third of Lands, and the third or half of the Moveables, that otherwise might have accrued to her by the Death of her Husband, or that his Executors and nearest of Kin might have laid Claim to by her own Death, in the Case of his Survivance. *Lastly*, The said *A*, with the joint Accord of his Father, binds and obliges himself and the Heir-male of the Marriage, which failing, his other Heirs above designed, to make Payment to the rest of the Children to be procreated of the same Marriage, of the Sum of sixty thou-

sand Merks *Scots* Money, at the Terms and under the Limitations afterwards set forth, *viz.* If there are more Children than one Son besides the Heir, in that Case the aforesaid Sum is to be divided amongst them in such Proportions as their Father shall think fit to determine by a Writing under his Hand; and in case of no such Determination, it is to fall to them by an equal Division: If there is but one Son besides the Heir, then the above said Sum is to be restricted to fifty thousand Merks; and if there are no Sons, but Daughters, it is to be restricted in the following manner, *viz.* If there is but one Daughter, to twenty five thousand Merks; if there are two, to thirty thousand Merks; and if there are three or more, to forty thousand Merks; to be distributed among them in manner above expressed: Of which Provisions, the said *A* obligeth himself and his above named to make Payment to the Children of the Marriage at their respective Ages of sixteen Years complete, under the Penalty of one hundred Pounds for each thousand Merks of Patrimony, in case of Failure; besides the Annualrents of their specifick principal Sums, so long as the same shall remain unpaid after the Term of Payment above assigned; and in the mean time to entertain and educate the Children suitably to their Birth and Quality, and to furnish them with all other Necessaries agreeably to their Station, till such time as their Portions become due. *On the other side*, the said *D* obligeth himself, his Heirs and Successors, to pay to the said *A*, his Heirs

Heirs or Assigns, in name of Dower with his betrothed Spouse, the Sum of fixty thousand Merks Scots Money, and that at the Term of *Whitsunday* in the ensuing Year One thousand seven hundred and thirty four, under the penal Sum of twelve thousand Merks in case of Failure; with the ordinary Annualrent of the principal Sum from the Date hereof, during the not Payment of the same. *Finally*, it is enacted, that Execution shall pass on this Contract at the Instance of the said *D*, whom failing, of *E* his Son, against the said *A* and *B* and their above written, for fulfilling the several Engagements on their Side, in favour of the said *C* and the Children of the Marriage. [*Registration, &c.*]

2. *Contract of Marriage after another Form.*

AT ——— and ———, the ——— and ——— Days of ———, ——— Years; It is covenanted and agreed between *A*, eldest Son and apparent Heir to *B*, now residing at ———, with the special Advice and Approbation of his Father, and the said *B* for himself, with the Assent of his Son, and they both with one Accord, on the one Part; and *C*, eldest Daughter to the deceased *D*, on the other Part, in manner under written: *That is to say*, Forasmuch as a Marriage is shortly intended to be celebrated betwixt the said *A* and *C*, the above *B* hath therefore bound and obliged, as he at this present, in consideration of the Marriage, binds and obliges himself, and his Heirs,

as

as well male as of Line, &c. to make Resignation of all and whole the Lands and Barony of E, lying in the Parish of ———, in the Shire of ———, as they are more fully described in his Rights and Infeiments thereof; and also, of all other Lands, Baronies, Tenements, Tithes, Patronages, Jurisdctions, Mills, Woods, Fishings, Annualrents, and other Heritage of whatever Denomination, presently pertaining to him any manner of way, dispensing with the Generality of this Obligement, and admitting the same to be as effectual as if the Lands and others generally mentioned were specially designed; *In the Hands* of his respective Superiors thereof, presently being or that shall happen to be for the time, or of their Commissioners having Power to receive Resignations on their behalf; *In favour* and for new Infeiment of the same, to be reassigned to the said B during all the Days of his Lifetime, and after his Decease, to the said A in Liferent, and the Heir-male of his Body by this Marriage, which failing, his Heirs-male whatsoever, which also failing, his Heirs whatsoever and their Assigns, in Fee: But always under the Burden of the Liferent Annuity after mentioned, to which the said C is provided in manner under written. *And for this purpose*, the said B hath also become bound, on or before the ——— Day of ——— next after the Date hereof, to produce the Evidences and Securities of his whole real Estate before any Number of Lawyers the said C shall pitch upon, and to make out and deliver all manner of Deeds and

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Writings they shall judge necessary for accomplishing the above said Resignation: Upon condition that it be allowable for him, not only to burden the forementioned Estate with the Payment of any Sum of Money, not exceeding two hundred Pounds *Sterling per annum*, to *F* his beloved Spouse, in name of Jointure, and in bar of the Terce and all other Dowers she can lay claim to after his Decease, in case of her Survivance; but also, to disable the said *A*, and his Heirs of Entail above mentioned, from giving out of themselves any Part of the Inheritance, or from contracting Debts or doing other Deeds by which it may be evicted from them, or the Course of Succession above prescribed in any measure evaded.

Item, The said *B* engageth himself, against the Term before assigned, to rid and acquit the Lands, Baronies and others above written, of all Debts and Incumbrances, both publick and private, with which they stand affected at the time of the Date hereof. *Item*, As the said *B* is to continue in the Possession of his whole heritable Estate for the Term of Life, he farther engageth himself, during that Space, to pay or cause be paid to the said *A*, his Heirs or Assigns, the Sum of two hundred Pounds *Sterling per annum*, beginning the first Year's Payment thereof at the Term of *Lammas* in the ensuing Year One thousand seven hundred and thirty four, for the Year preceeding, and so forth thereafter during the Space of Time above mentioned. *Item*, The said *A* and *B* bind and oblige themselves, jointly and severally, their
Heirs

Heirs and Successors, to make payment to the said *C* or her Assigns, in case she out-live her future Husband, of an Annuity or yearly Duty of one hundred Pounds *Sterling*, free of all Premiums or Deductions whatsoever, and that at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, beginning the first Term's Payment at the *Whitsunday* or *Martinmas* subsequent to the said *A* his Decease, for the Half-year's Annuity immediately preceeding that Term, and so forth thereafter during all the Days of her Lifetime; with ten Pounds *Sterling* of liquidated Penalty for each Term's Failure, *toties quoties*: And for farther Security concerning the Payment of the above said Annuity, the said *B* likewise engageth himself and his above named, to vest and seise the said *C* in the Liferent of all and whole the Lands of ————, with the Pertinents, being a Part of the before mentioned Lands and Barony of *E*, and for that end to make out and deliver such Deeds and Evidences, with relation to the Alimony, as the Counsel-men to be named by her as above shall advise. *Item*, The said *C* accepts of the Annuity or Rent-charge above mentioned, in lieu of all Claims and Demands she can anywise challenge out of the real or personal Estate of her betrothed Husband, in case she survive him; or that her Executors or nearest of Kin can lay claim to on her Death, in case he shall survive her. *Item*, The said *A*, with the joint Accord of his Father, binds and obliges himself and the Heir-male of the

the Marriage, which failing, his other Heirs above denominated, to make payment to the rest of the Children to be procreated betwixt him and his promised Spouse, at their respective Ages of twenty one Years complete, or on the Day of their Marriage, which soever of the two shall first happen, of the Sum of five hundred Pounds *Sterling*, to be divided amongst them in such Proportions as their Father and Mother shall agree; and if no such Distribution shall be made, the Division is to be equal, only the eldest, if a Son, is to have fifty Pounds *Sterling* more than any of the rest; together with the penal Sum of ten Pounds for each hundred Pounds of Patrimony, in case of Failure, and that over and above the Annualrents and Profits of their respective principal Sums, yearly and termly so long as the same shall remain unpaid after the Term of Payment above expressed. *On the other hand*, The said *C* hath assigned and transferred, as she at this present assigns, makes over and transfers, to the said *A*, his Heirs or Assignies, the Sum of five hundred Pounds *Sterling* of Principal, and one hundred Pounds of liquidated Penalty, with the Interest or Use-money of the principal Sum resting since the Term of —, and in time coming during the not Payment; contained in a Bond of Provision granted to her by the said deceased *D* her Father, and *E* her eldest Brother, jointly and severally, bearing date, &c. together with the aforesaid Bond itself, and all that hath followed or may follow upon it; *surrogating and substituting* the said *A* in her full

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Right and Place thereof for now and ever: In testimony whereof she hath instantly delivered up to him the Bond above mentioned, unregistred, to be kept and used by him and his aforesaid as their own proper Evidence in time coming. *Moreover*, it is covenanted and agreed, that although the intended Marriage should dissolve by the Death of either Party within Year and Day after the Celebration of it, the present Articles shall however subsist, and continue to have their designed Effect, in the same manner as if no such Dissolution had happened, notwithstanding any Law or Statute to the contrary. *Lastly*, Execution is appointed to pass at the Instance of *E*, whom failing, of *F*, Brothers to the said *C*; and failing of both, at the Instance of any two of her remaining Kindred, against the said *A* and *B* and their above named, for implementing the several Engagements on their Side of the Contract. [*Registration, &c.*]

3. *In another Way, thus.*

AT, &c. It is appointed, contracted and mutually concluded betwixt *A* and *B* on the one and other Parts, in manner following: *That is to say*, Whereas the forenamed Parties are to enter into the State of Matrimony with one another, the said *A*, on his side of the Contract, hath become bound and obliged, as he at this present, in consideration of the Marriage, binds and obliges himself, his Heirs, Executors and Successors,

to provide and have in readines, of his own proper Means, the Sum of forty thousand Pounds Scots Money, and to lay out the same in the Purchase of well holden Lands, or otherwise, in the Hands of responsable Persons, at the Sight and by the Advice of *C* or *D*, [*the Woman's Friends*,] and which soever of these Ways the Money is employed, to take the Securities of the one half of it to himself and his promised Spouse, the longest Liver of them two in Liferent, for her Liferent-use solely, and to the Children to be procreated betwixt them, (exclusive of the Heir-male,) which failing, to the said *A* his own nearest Heirs or Assignies whatsoever; and the Rights of the other half of it, to himself in Liferent, and the Children of the Marriage, (excluding the Heir-male, as was said,) which failing, his Heirs or Assigns whatsoever, in Fee; And how oft the above said Sum, being once laid out, shall happen to be uplifted, as oft to re-employ the same after the manner above related. *Besides*, the said *A* binds and obliges himself and his above named, to provide the half of all Lands, Tenements, &c. [*Clause of Conquest, as in the penult Settlement.*] On the other side, Whereas the Property of the Fee of the Lands and Estate after mentioned, is not as yet legally established in the Person of the said *B*, she hath therefore become bound and obliged, with all convenient Diligence, to get herself served and retoured as Heir of Tailzie and Provision to the deceased *E* her Brother-german, or to any other of her Predecessors who died last in-

vested with the Fee thereof, and as such, to obtain herself invest and seised in the same; and being thus invested, she likewise obligeth herself and the other Heirs of Entail after specified, to vest and seise the said *A* her future Husband in Life-rent, in these Parts and Portions of the above mentioned Estate hereafter particularized; and that by two several Infeftments and Manners of Holding, &c. [*forma communi*:] And for that purpose, the said *B* makes and constitutes, &c. to purchase and procure Brieves forth of the Chancery, for obtaining her served and retoured as Heir of Tailzie and Provision to her said deceased Brother, or to any other of her Predecessors who died last vest and seised in the Fee of the forementioned Inheritance; to proclaim the Brieves, expedite the Service, return the same to the Chancery, and afterwards to raise Precepts upon it, and procure all other Writings requisite for infesting her accordingly; to pass the Infeftments, registrate the Safines, and to do every other thing in relation to the whole Affair that she might do herself if present: And her Title being to established, she likewise authorizeth and impowereth her forenamed Proctors, jointly and severally, to resign and surrender, as she at this present, now as then and then as now, resigns, gives up and surrenders, all and whole the Lands, Lordship and Barony of —, lying in the Parishes of — and —, in the Shire of —, with the Tower, Fortalice, Manour-place, Yards, Orchards, Parks, Inclosures, Woods, Forests, Parts, Pen-

Pendicles and Pertinents thereof, as they are more fully described in a Disposition and Deed of Entail dated, &c. made by the deceased *F* to the also deceased *E* his Son, and the Heirs whatsoever of his Body; which failing, to the said *B* his Daughter, and the Heirs-male of her Body; which failing, to the other Heirs of Tailzie and Provision therein and after mentioned; together with all Right, &c. *In the hands, &c. In favour* of the said *B* herself, and the Heir-male of her Body by this Marriage; which failing, of the Heir-male of her Body by any future Marriage; which failing, in favour of [*as in the original Tailzie,*] heritably and irredeemably in due and competent Form: *Providing always*, as it is hereby expressly provided and decreed, and appointed to be engrossed in the Investiture ensuing hereon, That [*The Conditions in the former Tailzie, particularly the irritant and resoluteive Clauses, were here repeated.*] Moreover, in pursuance of the Privilege bestowed on the Heirs-female by the Deed of Entail above expressed, the said *B* grants farther Power to her Proctors, now, as if the above said Resignation were already performed, and Sasine had followed upon it, To make Resignation of all and singular the Lands of ——— with the Pertinents, being a Part of the above written Lordship and Barony of ———, to the immediate Superior of these Lands, or to his Commissioner as was said, *In favour* of *A* her betrothed Husband in Liferent, during all the Days of his Lifetime after her Decease, in case he outlive her:
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Upon Condition however, that he shall have no farther Concern with the Revenues and annual Profits of the above mentioned Inheritance, nor with any other heritable or moveable Subject, presently belonging, or that shall at any time after this pertain to the said *B* his promised Spouse, on account of the *jus mariti*, the *Courtesy of Scotland*, or of any other Title whatsoever; and that the same shall neither be liable to his Deeds, nor subjected to the legal Diligence of his Creditors, for Payment of the Debts already contracted, or to be contracted by him at any time hereafter; but that, notwithstanding such Debts, Deeds or Diligence, it shall be allowable for the said *B*, by herself alone, without the Consent of her Husband, to uplift and discharge the Profits and Casualties of the before mentioned Estate, and to apply the same as she shall think fit; to remove and put in Tenants, and to do every other thing with respect to the Management thereof as if she were still a single Person: Accordingly, the said *A*, at this present, renounces and makes over the two legal Provisions above mentioned, the *jus mariti* and *Courtesy*, in favour of the said *B*, and the Heirs of Entail above designed, for now and ever: And upon these two Resignations respectively, Acts, Instruments, &c. *Further*, The said *B* not only engageth herself, and the other Heirs of Tailzie and Provision before named, to warrant and defend the Lands and others above written, to which the said *A* is provided in Liferent, at all Hands and in every

every Event whatsoever; but also, assigns and transmits to him the Rents and Duties thereof falling due for the Crop and Year of God immediately after her Decease, and in time coming, during his Lifetime; with all Action, &c. *Surrogating*, &c. With Power to him, on the Conditions above rehearsed, to intromit with and uplift, and, if need be, to do Diligence for obtaining Payment of the Rents and Duties above assigned; to remove and put in Tenants, and do every thing else that any other Liferenter, by the Laws of this Kingdom, might do in a like Case. *Furthermore*, The said *B*, as if she were already clothed with the Fee of the above mentioned Inheritance, desires and requires you, &c. [*Precept of Sasine for investing the Husband with the Liferent-lands.*] Lastly, Execution is appointed to pass on this Settlement at the Instance of *G* or *H*, on Behalf of the above *A*; and of the said *C* or *D*, on Behalf of the above *B*, for effectuating the mutual Engagements of the Parties on their several Sides of the Contract. [*Registration*, &c.]



T I T. IV.

Concerning the Transmission of incomplete real Rights.

SO long as heritable Rights remain personal, that is, till they are made real by Infeftment, they are transmissible by Affignation; or rather, according to the present Practice, by Disposition and Affignation.

A Disposition and Affignation is, *A Deed of Conveyance, whereby some incomplete real Right, such as a Charter, a Disposition of Lands, an heritable Bond, a Contract of Wadset, or an Adjudication and the like, upon which no Infeftment hath followed, is transmitted from one termed the Cedent, to another stiled the Assigny or Cessionary.*

To return to the first of these incomplete Rights that was named, *viz.* Charters. Although the Vassal, being once infeft, cannot directly transfer the Fee to a singular Successor without the Superior's Consent, yet before the Right is realized by Infeftment, he may so transfer it, provided the Charter gives the Feu to him and his Assigns. Take the following Example.

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Assignment to a Charter before Safine is taken upon it.

BE IT KNOWN to all Men, That I A, as having Right in manner after mentioned; Whereas B Superior of the Lands and others under written, hath, by a Charter dated —, granted and disposed to me, my Heirs or Assignies, all and singular the Lands, Tithes and others hereafter denominated, with the Pertinents, to be holden of him, his Heirs and Successors, by the Tenure therein expressed, as in the fore-mentioned Charter, containing a Clause of absolute Warranty, a Precept of Safine, and divers other Clauses and Articles, more fully is represented: And whereas C hath instantly made Payment to me, &c. Have therefore sold and disposed, as I at this present, under the Burden of the annual Feu-duty, and other Prestations specified in the Reddend of the above said Charter, sell, &c. to the said C, his Heirs or Assignies whatsoever, absolutely and irredeemably, all and whole [Transcribe the Lands, &c. from the dispositive Clause of the Charter,] together with all Right, &c. Moreover, I hereby make and constitute the said C, his Heirs or Donataries, my Cessionaries and Assignies, in and to the before mentioned Charter it self, and to the Clause of Warranty, Precept of Safine, and whole other Clauses and Obligements therein contained, with all that hath followed or may follow upon it; and in like

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manner,

manner, in and to the Rents, Revenues and Casualties of the Lands, and others above written, of the Crop and Year of God ———, and in time coming; with all Action, &c. *Surrogating* and *substituting* the said *C*, under the Burden of the Feu-duties and other Prestations above expressed, in my full Right and Place of the Premises for ever: With Power to him and his above named, in virtue of the Precept of Sasine above mentioned, and of this my Assignment of it, to obtain themselves vest and seised in the Lands and others before rehearsed; to intromit with and uplift the Rents and Duties above assigned; and generally, to do every other thing in relation to these Matters that I might have done my self before the granting hereof. Which Disposition and Assignment, I the said *A* bind and oblige my self, my Heirs and Successors, to warrant against all Facts and Deeds done or to be done by me in prejudice thereof. And I have herewith delivered up to the said *C* the aforesaid Charter, to be kept and used by him and his above written as their own proper Evidence in time coming. [*Registration, &c.*]

The Form of an Assignment to a Disposition of Lands may be easily discerned from that of the Precedent already given: However, for a singular Pattern, I here present you with the Conveyance of one, granted to the Cedent by the Commissioners appointed to enquire of the forfeited Estates in *Scotland*.

Assignment

Assignment to a Disposition of Lands.

K NOW ALL MEN, *That I A*, as having Right in manner after specified, *Considering* that *B, C and D*, Trustees appointed for the Sale of forfeited Estates in *Scotland*, by their Disposition or Indenture of Bargain and Sale, *setting forth*, That in pursuance of the Acts of Parliament made in that Behalf, the Estate after mentioned, which pertained to *E* late Earl of *F*, attainted, being by them put to Sale by way of Auction, the same was on the — Day of, &c. purchased by me as the highest Offerer for it; and that in consequence of the Acquest, and pursuant to the Directions of the above said Acts of Parliament, they, by a Minute of the Sale signed by them and me, certified and declared, first of all, That [*Copy out the rest of the Narration from the Disposition it self, which you'll find p. 57; only observe, that in the present Case 'tis the Disponee, and not the Trustees, that recapitulates the Minute; whereas in the Writing referred to, the Case is inverted*] as the Minute of Sale there mentioned, bearing Date, &c. more largely represented. *And inferring*, that I having accordingly delivered up to them proper Certificates of the Payment of the above said Sum and Interest due thereon, whereof I was thereby exonerated for then and ever: They, therefore, sold and dispoed to me, my Heirs or Assignies, all and singular the Lands, Earldom, Lordships, Baronies, and others above

and afterwards rehearsed, to be holden after the Form and Tenure therein related ; as the fore-mentioned Indenture, bearing Date, &c. containing a Procuratory of Resignation, and divers other Clauses, more fully implies. *And considering*, that albeit the whole Purchase-money is thereby acknowledged to have been received from me, and that the Disposition runs in my Name solely ; and yet nevertheless that the one half of the Price was actually advanced by G, and that it was previously concerted betwixt us, that I should divest my self in his favour of a like Share of the Acquisition, in manner herein set forth : *Know all Men*, I say, That on these Considerations, I the said A have sold, transferred and disposed, and at this present, under the Burden of a proportional Part of the Qualifications and Provisions mentioned in the Minute of Sale above narrated, sell, &c. to the said G, his Heirs or Assignies whatsoever, absolutely and irredeemably, all and whole the just and equal half of the Earldom of F, comprehending the several Lands, Lordships, Baronies, and others before and hereafter enumerated, namely, [*Here the Particulars were repeated,*] with the equal half of the Castles, Towers, Fortalices, Yards, Orchards, Parks, Inclosures, Mills, Mill-lands, Coals, Coal-heughs, Mines, Minerals, Forests, Woods, Salmond and other Fishings, Jurisdiction of Baronies, Power of Pit and Gallows, and of the whole other Liberties and Privileges belonging to the forementioned Earldom ; and also, the one half of the yearly

yearly Fairs and weekly Markets of it, and of all the Customs and Emoluments accruing therefrom; together with the half of all other Lands, Tenements, Messuages, Seigniories, Superiorities and Hereditaments, pertaining to the said *E* before his Attainder, and vested in the above named Trustees for the Use of the Publick; together also with the half of the Arrears or Rests of Rents, Feu-duties, Customs and Casualties of whatever sort, remaining in the Hands of the Tenants, Feuers and Possessors of the above said Estate, of the Crop and Year of God One thousand seven hundred and twenty six, and all preceeding Years, and all Right and Title whatsoever, that I, my Authors or Predecessors, either have or anywise can challenge to the particular half of the Subjects hereby transmitted, or to any Part thereof, in time coming. *Further*, I hereby assign and make over to the said *G* and his above named, the before mentioned Minute and Indenture of Bargain and Sale themselves, with the Procuracy of Resignation, and all other Clauses and Obligements therein contained, in so far as they concern or may be extended to the half of the Purchase above transferred; as also, the half of the Rents, Revenues, Customs and Casualties of the forementioned Estate, falling due for the Crop and Year of God One thousand seven hundred and thirty two, and in time coming, with all Action, &c. *surrogating*, &c. With Power to him, pursuant to this my Assignment of the Procuratory of Resignation above written, to obtain himself feof-
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fed and seised as joint Proprietor with me in the Lands and Estate above mentioned; to intromit with and uplift the Rents and Duties above transmitted; and generally, to do every other thing concerning his own particular half of the Subjects hereby disposed, that I might have done my self before the granting of this Assignment. Which Disposition and Assignment, I bind and oblige my self, my Heirs and Successors, to warrant, &c. [Registration, &c.]

Assignment to an heritable Bond.

BE IT KNOWN to all Men, *That I A, Because B*, by his heritable Bond dated, &c. bound and obliged himself, his Heirs and Successors, to make payment to me, my Heirs or Assignies, of the principal Sum of ———, at the Term of ——— then next to come, and of the Sum of ——— of liquidated Expences in case of Failure, with the Annualrents of the principal Sum at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, beginning the first Term's Payment at *Martinmas* then ensuing, together with the Sum of ——— of Penalty for each Term's Failure in payment of the aforesaid Annualrent; for farther Security whereof, he likewise engaged himself and his above named, on the Condition after specified, to vest and seise me and mine aforesaid in an Annualrent of ———, or such an Annuity as should correspond to the forementioned principal Sum, by the Laws of this King-

Kingdom for the time, yearly to be uplifted at the Terms and by the Portions above expressed, forth of the Lands and others hereafter denominated; as the above said Bond, containing divers other Clauses and Obligements, more fully relates: *And because C hath made payment to me, &c. Have therefore sold and disposed, as I at this present sell, &c. to the said C, his Heirs or Assignies, heritably, and under Reversion in manner after mentioned, all and whole the above said Annualrent of —, or such an Annualrent, less or more, as shall be answerable to the before mentioned principal Sum of —, according to the Laws of this Kingdom for the time, yearly to be uplifted at the Terms above specified by equal Portions, forth of all and singular [Transcribe the Lands from the Bond,] or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Profits of the same; with all Right, &c. Further, I hereby make and constitute the said C, his Heirs or Donataries, (secluding his Executors) my Cessionaries and Assignies, in and to the above mentioned principal Sum of —, and to the Sum of — of liquidated Penalty, with the Annualrents or Use-money of the principal Sum resting since, &c. and in time coming during the not Payment of it, together with the termly Penalties hitherto incurred through the untimely Payment of these Annualrents; and in and to the aforesaid Bond itself, the Procuracy of Resignation, Precept of Sasine, Clause of absolute Warranty, and whole other Clauses*

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Clauses and Articles thereof, with all that hath followed, &c. *Surrogating* and *substituting* the said C in my full Right and Place of the Premises forever; provided however, that the forementioned Annualrent be redeemable and under Reversion from the said C and his above named, on the Terms prescribed by the heritable Bond above rehearsed: With Power to him, under the Qualification above expressed, to procure himself infeft and seised in the aforesaid Annualrent, by virtue of the Procuratory of Resignation or Precept of Sasine contained in the above said Bond, and of this my Assignment of the same; to intromit with and uplift, and, if need be, to sue for Payment of the Sums above assigned; to grant Acquittances and Renunciations on the Receipt thereof, which shall be sufficient to the Receivers; and generally, &c. Which Disposition, &c. [*Clause of Warranty.*] Furthermore, I have herewith delivered up to the said C the Bond above mentioned, to be kept, &c. [*Registration, &c.*]

N. B. If the heritable Bond were to be transferred a second or third Time, you have only to adject to the Narration of the Bond a Rehearsal of the several Conveyances that have been made of it, and then to proceed as above, making mention of the Assignment, or Assignment and Translation, where-ever the Bond is named.

The Difference betwixt an Assignment to an incomplete Wadset-right, and a Disposition of the like Right after it is made real by Infeftment, lies

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lies chiefly in this one Respect: *This* contains a Narration of the Investiture that passed on the Contract, and likewise all the real Clauses of a Disposition, such as, an Obligement to infest, a Procuratory of Resignation, a Precept of Safine, &c. whereas *that*, as being a personal Right, contains none of these Particulars: So that in a Conveyance of the former, one must pass by these real Clauses, that are necessary in the latter, and must skip over every thing else that relates to the Infestment, all the Way downward to the Clause of *Surrogation*, which, in the present Case, is mentioned thus: — Surrogating and substituting the said C (the Assigny) in my full Right and Place of the Premises for ever; on condition that the Lands and others above mentioned be redeemable and under Reversion from him and his aforesaid, upon the Terms prescribed by the Contract of Wadset above rehearsed: With Power to him, under the Burden of the Qualification just now expressed, to obtain himself infest and seised, &c. to call for and uplift the Sums of Money, or to intromit with and receive the Rents and Duties [if it is a proper Wadset] above assigned; and, if need be, to use Requisition and all manner of Diligence for the Recovery thereof; to grant Discharges and Renunciations on payment, either in whole or in part, which shall be sufficient to the Receivers; and generally, &c.

What hath been said concerning the Assignment of a Contract of Wadset, if applied to the Transmission of a Decree of Adjudication, will

almost hold in every Particular : However, for farther Illustration of the Matter, I shall present you with a Conveyance of this last kind, made to one, who, in consequence of a Process carried on by the Creditors of the common Debtor, had acquired Right to the Lands adjudged by a Decree of Sale of the Lords of Session ; and in this Conveyance I shall suppose the Estate to have been sold off, and purchased by Parcels.

Assignment to a Decree of Adjudication.

K NOW ALL MEN, That I *A*, In regard [*After a Recital of the Grounds of the Adjudication and of the Decree itself, in the manner precedented by the Disposition of an Adjudication p. 123. the several Steps of the Process of Ranking and Sale are related as follows :*] In the same manner, pursuant to a Process of Ranking and Sale commenced before the Lords of Session by some of the Creditors of the said *B*, (*the common Debtor*,) the Lords by their Decree, bearing date, &c. ranged and preferred these and the rest of the Creditors therein named in manner therein expressed : And in prosecution of the Action, the Lands and Estate above mentioned being exposed to a publick Auction, the said Lords, by their Decree of Sale, dated, &c. adjudged and awarded the above said Lands and Barony of *A*, to pertain to *C* and the Heirs-male of his Body, which failing, to his other Heirs or Assignies after mentioned, upon Payment to the Creditors of the a-

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bove *B*, according to their Pre-eminence by the Decree of Ranking above rehearsed, or on Consignation for their Behoof, of the Sum of ——— Scots Money, at the Term of *Martinmas* then next to come, with the Interest thereof from *Whitsunday* preceeding that Term, during the not Payment or Consignation; the Creditors, on the other hand, being thereby bound, how soon they actually obtained Payment of their respective Proportions of the Purchase-money, to transmit their several Rights and Diligences in favour of this *C* and his above named, *omni habili modo*, in so far as his particular Acquisition stood therewith affected, and to grant absolute Warrandice to the Extent of the specifick Sums they should receive; to the end he might ascribe his Possession to any one or all of these Rights, or to the Decree of Sale, as he had a mind: In consequence of that Action, the Lords of Session, by a second Decree of Sale, pronounced on the — Day of —, adjudged and ordained the Lands of *B* above designed, with the parsonage and vicarage Tithes thereof, to pertain to *D*, his Heirs or Assignies, from and after the Term of *Whitsunday* in the Year One thousand seven hundred and thirty two, upon payment to the Creditors, or on Consignation for their Behoof, of the Sum of ———, with the Interest thereof from the said Term during the not Payment or Consignation; the Creditors by this Decree being also bound to make over their particular Rights and Claims in his favour in manner above related: And in the Issue of the forementi-

oned Action, the said Lords by a third Decree, bearing date, &c. awarded and decreed the House or Tenement of Land before described, with the Pertinents, to pertain to *E* and *F* jointly, their Heirs or Assigns, &c. [*ut supra*,] as the three Decrees above expressed more fully set forth: Besides, the said *D*, by an Assignment dated, &c. assigned and transferred to *G* the Lands of *B* and others specified in the second Decree of Sale above mentioned, as this Assignment doth also set forth: *Item*, *H* being appointed Factor on the before mentioned Estate, and he having given in the Accounts of his Intromissions with the Rents and Revenues of it, there came out to be due by him a Balance of three thousand Pounds *Scots*; and he having at the same time given in a List of the Arrears or Rests of Rent, owing by the Tenants of that Estate during the time of his Factorage, the same was put to Sale and purchased by *J*, for the Sum of one thousand Pounds *Scots*; which Sum, with the Balance remaining in the Factor's Hands, as was said, were ordained to be paid in to the said *C* (*one of the Purchasers*) on account of the Creditors, as the several Decrees, Acts and Warrants relative to these Matters fully represent: After all, pursuant to an Ordinance appointing a Calculation to be formed, commensurating the Share of the particular Funds above written, accruing to the several Creditors of the said *B*, according to the Order in which they are classed by the Decree of Ranking and Preference already rehearsed, a Scheme of Division was drawn

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up and approven of by the said Lords; and by this Computation I the said *A* am stated to draw the following Sums, *viz.* From the above *C*, as Purchaser of the Lands and Barony of *A*, and to whom the Balance remaining in the Factor's Hands, and the Price of the Arrears of Rent due by the Tenants, were appointed to be paid in; from him, I say, I am stated to receive the Sum of — ; and from the said *G*, who hath now come in place of the above *D*, the Sum of — ; and from the said *E* and *F*, the Sum of — ; with the Interest of these Sums from *Whitsunday* One thousand seven hundred and thirty two Years, and in time coming during the not Payment or Consignation, as the forementioned Scheme of Division, with the Act and Warrant relative to it, do testify : *And in regard* that the said *C*, *G*, *E* and *F*, have accordingly made payment of the respective Sums of Money allotted to me by the Computation above specified, and of the Annual-rents thereof resting at the time of the Date hereof, of which I hereby acquit them, their Heirs and Executors, for now and ever : Therefore, I say, *Know all Men*, That I have sold, alienated and disposed, and at this present sell, &c. all and singular the Lands, Barony, Tenements and others before denominated, in the following Manner, *viz.* all and whole the Lands and Barony of *A*, comprehending the particular Towns, Lands, Mills, Tithes, Manour-places and others above enumerated, in favour of the said *C* and the Heirs-male of his Body, which failing, of the other Heirs

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Heirs of Tailzie and Provision succeeding to him in the Estate of *D*, which also failing, of his Heirs or Assignies whatsoever; *as also*, all and whole the aforesaid Lands of *B*, with the Houses, &c. together with the parsonage and vicarage Tithes belonging to [them, in favour of the said *G*, as Cessionary to the above *D*, and to his Heirs or Assigns whatsoever; *again*, all and whole the House or Tenement of Land above mentioned, with the Shops, Cellars, Gardens and Pertinents of it, lying and bounded in manner above recited, in favour of the said *E* and *F* jointly, their Heirs or Assignies, heritably, in all time coming. *Further*, I the said *A* hereby make and constitute the said *C*, *G*, *E* and *F*, each of them for himself and his before named, in so far as concerns their respective Acquisitions above set forth, my Cessionaries and Assignies, in and to the Decree of Adjudication before specified, and Breviary thereof, with the whole Grounds and Warrants above written upon which it proceeded, and to the Sums of Money, Principal, Annualrents and liquidated Penalties therein contained, with all that hath followed, &c. *as also*, in and to the Rents, Revenues and Casualties of the before mentioned Lands and Estate, of all the Crops and Years that have passed since the Date of the above said Adjudication, and in time coming, with all Action, &c. *Surrogating*, &c. With Power to them, in virtue of the aforesaid Decree of Adjudication and this my Assignment of it, to obtain themselves invested with the specifick Subjects disposed to them

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as above; to uplift and receive the Rents and Duties before assigned, and if need be, &c. *Moreover*, I bind and oblige my self, my Heirs and Successors, to warrant and maintain this Assignment, with the Subject-matter of it, to the Extent of the particular Sums paid in to me as above, and Interest thereof from the time of Eviction, if at any time hereafter the same shall happen, at all Hands, &c. *Furthermore*, it is enacted and declared, that it shall be allowable for the forenamed Purchasers to attribute their Possession, either to the present Deed of Alienation, or to the Decrees of Sale before narrated, and to make use both of this and that, either as separate and distinct, or as cumulative and corroborative Rights, the one without prejudice to the other. *Lastly*, in regard that the Barony of *A* is of far greater Value than either of the other two Acquisitions, I have therefore, with Consent of the other Purchasers, delivered up to the said *C*, with this Conveyance, the Decree of Adjudication above mentioned, and the Abstract thereof, with the whole Vouchers of the Claim upon which it is founded, to be kept, &c. on condition that they be made forthcoming to the said *G*, *E* and *F*, at every Season when they shall necessarily require them. [*Registration, &c.*]

I shall conclude these Transmissions with a Caution concerning them in general; and it is this, That they are affected by the Backbonds or other personal Obligations of the Cedent of the incomplete

complete real Right, provided Inhibition hath been used upon these Backbonds, or even, as the Law phrases it, *if the Matter is made litigious* before the Right is perfected in the Person of the Assigny; although singular Successors are in no Danger from such personal Obligations upon other Terms.

The Transmission of Liferent-rights being somewhat analogous to that of incomplete real Rights, it may not seem amiss to class them together in one and the same Title.

For although Liferent-rights, when first constituted, require Infestment to their Completion, yet the Liferenter being infest, may transmit the Right by a simple Assignment without Infestment; because the Liferent itself being a personal Servitude, neither needs, nor can admit of a subaltern Infestment, the Assignment alone, when completed by Possession, or rather by Intimation, establishing the Conveyance effectually. Besides, a Liferenter cannot substitute one in his Place directly, because the Liferent-right itself is incommunicable, and resolves into a Right of an inferior Rank in the Person of an Assigny, giving only Power to uplift and enjoy the Rents and Profits of the liferented Subject during the Cedent's Lifetime; in which respect it becomes much the same with the *jus mariti* belonging to an Husband. This may appear more plainly by an Example.

Assignment

Assignment of a Liferent-right.

BE IT KNOWN to all Men, *That I A Relict* of the deceased *B*; *Inasmuch* as by the Marriage Settlement betwixt him and me on the one and other Sides, of Date, &c. I was provided in Liferent to the Lands of ——— with the Pertinents; and was accordingly, upon the ——— Day of, &c. infest and seised in these Lands for the Term of my Lifetime, as in the above said Settlement, and in the Instrument of Sasine relative to it, at more length is contained: *And inasmuch* as *C*, upon the Result of a Process of Sale commenced before the Lords of Session, hath acquired the before mentioned Lands, and hath instantly made Payment to me of a certain Sum equivalent to nine Years Purchase of them, of which Sum he is hereby exonerated for now and ever: *Have* therefore assigned and transferred, and at this present, on the Condition after specified, assign, make over and transfer to the said *C*, his Heirs or Donataries, not only the Rents, Farms and annual Profits of the Lands and others above denominated, to which I am provided in Liferent, as was said, and that of the present Crop and Year of God One thousand seven hundred and thirty three, and in time coming during my Lifetime, with all Action and Suit anywise competent to me for the Recovery thereof; but also the Marriage Settlement and Instrument of Sasine before related, and all the Articles,

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articles, Clauses and Contents of these Writings, in so far as they concern the Rents and Duties hereby passed over, with the Decrees of Mails and Duties, and whatever other Diligence hath followed or may follow upon them; *surrogating* and *substituting* the said C in my full Right and Place of the Premises for ever: With Power to him and his above named, to uplift and discharge the Rents and Duties before assigned; to prosecute the Tenants and Possessors of the liferented Subjects, upon the Decrees already obtained or to be obtained against them, for effectuating the Payment of these Rents; and in a word, to perform the several other Acts of Administration, with respect to the whole Matter, I might have exercised my self before the Time of the Date of this Alienation. *Upon Condition* however, that this Assignment prove no Bar to my Interest in the household Plenishing and other moveable Goods of my deceased Husband, but that my Concern in these, as well as in the rest of his Estate mentioned in the aforesaid Settlement, shall still continue the same it was before the Date of this Assignment: Which Assignment, I the said A engage my self, my Heirs and Executors, to warrant, &c. *Moreover*, I have herewith delivered up to the said C an Extract of the Marriage Articles before rehearsed, and the Instrument of Sasine ensuing upon them, to be kept and used by him and his above named as their own proper Evidences in time coming. [*Registration, &c.*]

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The foregoing Specimen may be somewhat illustrated by that which follows.

Assignment of a Liferent Right, in a Case where the Cedent had evicted the Heritage of her Husband's Representative, for payment of an Annuity provided to her in the Marriage Settlement.

K NOW ALL MEN, *That I A Widow of B; Seeing, by the Contract of Marriage betwixt my deceased Husband and me, bearing Date, &c. he became bound to provide me in an Annuity or yearly Duty of one hundred Pounds Sterling, for the Term of my Lifetime after his Decease, free of all Premiums or Deductions whatsoever, and to make Payment of it at two Terms in the Year, Whitsunday and Martinmas, by equal Portions, beginning the first Term's Payment at the Whitsunday or Martinmas subsequent to his Death, for the half Year's Annuity immediately preceeding that Term, with ten Pounds Sterling of liquidated Penalty for each Term's Failure toties quoties: And that upon the — Day of — last, there was a Decree given out at my Instance against C, eldest Son and Heir apparent to the deceased D, Brother-german and Heir served and retoured to my forenamed Husband, decerning him, on account of the passive Titles therein mentioned, to make Payment to me of the above said Annuity of one hundred Pounds Sterling, since the Term of Whitsunday in the Year One*

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thousand seven hundred and thirty, and in time coming during my Lifetime, and of the termly Penalties then incurred, or that should afterwards become due through the untimely Payment of it: *And that* upon this Decree I raised Letters of special Charge to enter Heir, in agreeableness to which Letters, having caused charge the above *C* to enter Heir in special to his deceased Father, in terms of the Act of Parliament, I afterwards commenced a Process of Adjudication before the Lords of Session, and in the Issue of that Process obtained a Decree, adjudging from him the Lands and Barony of ——— with the Pertinents, lying in the Shire of ———, as they were more fully described in a Decree of Adjudication, dated, &c. obtained by the said deceased *D*, in an Action against *E*, (awarding to the Adjudger the fore-mentioned Barony, with its Pertinents, in payment of the extended Sum of ———, and the Annualrents of this Sum from that Time forward during the not Redemption,) and appropriating these Lands, with this last Decree, the Sums of Money, Principal, Annualrents, and liquidated Penalties, contained in it; and the Claims and Warrants upon which it is founded, to me, my Heirs or Assignies, in payment of the Arrears of my Annuity resting at the Term of *Martinmas* in the Year One thousand seven hundred and thirty, with the termly Penalties then incurred through the untimely Payment of it, extending in all to the Sum of ———, and the Annualrents of this accumulated Sum from thenceforth during the

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not Redemption; as also, in Payment and Security of the above said Annuity itself, and the termly Penalties, if incurred, as they afterwards fall due from one Term to another, till the time of my Death, and that besides the Composition to the Superiors, and the Expence of the Infestment to follow upon the Adjudication; as in my last mentioned Decree, dated, &c. in the Abstract of it, recorded, &c. and in the other Writings above rehearsed, at more length is held forth: *And also seeing F* hath made Payment to me of a certain Sum equivalent to those hereafter assigned, of which I hereby acquit him, his Heirs and Executors, for ever: *Know all Men*, I say, That, for these Reasons, I the said *A* have sold and transferred, and at this present sell and transfer to the said *F*, his Heirs or Assignies, not only the before mentioned Annuity or yearly Duty of one hundred Pounds *Sterling*, to which I was provided by the Marriage before expressed, of all the Years and Terms hitherto remaining unpaid, as well as in time coming during my Lifetime, together with the termly Penalties accruing due through the untimely Payment of it; but also, the above mentioned Lands and Barony of —, with the Pertinents, as they are more fully denominated in the Decrees of Adjudication before related, and all Right and Title whatever, which I either have or anywise can challenge to the above said Barony, or any Part of it, in time coming. *Moreover*, I hereby assign and make over to the said *F*, and his above named,

med, the extended Sum of —, and the Annualrents thereof bygone and in time coming, mentioned in the Adjudication obtained by the deceased *D*, and appropriated to me as above, with that Decree itself, the Vouchers and Claims upon which it proceeded, and all that hath followed or may follow upon it; and also, the Contract of Marriage already rehearsed, the Decrees of Constitution and Adjudication ensuing upon it, with the whole Clauses, Articles and Contents of these Writings anywise conceived in my favour, and all Action, &c. *surrogating and substituting* the said *F* in my full Right and Place of the Premises for ever: With Power to him and his aforesaid, in virtue of the Adjudication obtained by the above *D*, or of that obtained at my own Instance, and this my Assignment of both, to procure themselves vest and seised in the forementioned Barony of —; to intromit with and uplift, and, if needful, to sue for the particular Sums above assigned; to grant Acquittances and Renunciations upon Payment, which shall be sufficient to the Receivers; and generally, to do every thing else concerning the whole Matter I might have done my self before the granting of this Assignment: Which Assignment, &c. [*Clause of Warranty.*] Furthermore, I have herewith delivered up to the said *F* an Extract of the Contract of Marriage, with the whole other Writings above narrated, to be kept, &c. [*Registration, &c.*]



T I T. V.

Concerning Charters by Progress, or renewed Dispositions of the Fee.

HAVING in the foregoing Titles discoursed you of the Rise and Progress of Fees, I am in this to take a View of the Writings that are requisite towards the Accomplishment and Perfection of subaltern Transmissions of them. The Writings I aim at are, those granted by Superiors upon the Renewal of Investitures; such as, Charters of *Resignation*, of *Confirmation*, and of *Adjudication*.

S E C T. I.

Of Charters of Resignation.

WHERE Lands or other Hereditaments are passed over by a Deed of Alienation, containing a Clause of Infestment, *a me* and *de me*, seconded with a Procuratory of Resignation and Precept of Sasine, the Receiver of such a Right may complete the same either by Resignation or Confirmation as he hath a mind. If he makes
Choice

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Choice of the former, the first Step is to make Resignation, which, if the King is Superior, is made to the Barons of Exchequer, by the symbolical Delivery of a Pen, given by the Resigner himself, or by some other Person having a Procuratory from him for that Effect. This Formality is performed in Presence of a Notary, who reduceth the whole Solemnity into the Form of an Instrument, called an *Instrument of Resignation*. Upon this Instrument, a Signature of Resignation, drawn up and marked by a Writer to the Signet, is presented to the Barons of Exchequer for a Warrant to expedite the Infestment; and if they find the Signature conformable to the former Charters, they pass it accordingly. The Party in the next Place, upon Payment of the Composition for his Entry, gets the Signature casheted and recorded in the Books of Exchequer, and afterwards returns it to the Writer that formed it, who issues out a Precept under the Signet (where, by the way, the Signature is left) directed to the Keeper of the Privy Seal; and he, in obedience to this Precept, forthwith directs another Precept under that Seal to the Keeper of the Great Seal, and records it in the Register of the Privy Seal, retaining the Precept under the Signet for his Warrant. On Sight of this last Precept, the Director of the Chancery draws up a Charter of Resignation agreeable to the Substance of the Signature and Precepts, and records it in the Register of the Great Seal, which is appended to it by the Keeper of that Seal, who retains the Precept

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Concerning Charters by Progreſs. 193

kept under the Privy Seal as his Warrant; and pursuant to this Charter the Reſignatary takes Saſine.

But if the Superior is a Subject, the Diſponer or his Proctor makes Reſignation to him, or to one commissioned by him; and the Diſponee, on payment of a Year's Rent, obtains a Charter, upon which he takes Saſine without more ado. However, though the Barons of Exchequer never reſuſe Reſignations by the King's Vaſſals, nor Confirmations to them, a Superior cannot be compelled to receive a ſingular Succeſſor claiming Right any other way than by Adjudication, even though the *Dedimus* in the original Grant bears to the firſt Vaſſal and his Aſſigns. Thence it is, that upon his Reſuſal, the Purchaſer ordinarily takes a Bond from his Author for a Sum equivalent to the Price, and by adjudging the Lands for Payment, obliges the Superior to receive him in the ſhape of an Adjudger.

The ultimate Step in theſe Reſignations tending to the Completion of the Right, is, the Reſiſtration of the Instrument of Saſine enſuing upon the Charter; but in a Reſignation *ad remanentiam*, proceeding upon a Diſpoſition to the Superior, the laſt Step is, the Reſiſtration of the Instrument of Reſignation itſelf, which denudes the Vaſſal effectually, and consolidates the Property with the Superiority, without the Solemnity of a new Infeſtment.

Thus far concerning the Method practiſed in
B b bring-

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bringing about the Establishment of real Rights by the renovatory Settlements I am here mentioning, whether they are granted by the King or a subaltern Superior. In the sequent Parts of this Title I shall decline to meddle with Charters from the Sovereign, for the same Reason that was given for it in treating of original ones, and shall content my self with Specifications of those granted by Subject-superiors solely. I begin with

A Charter of Resignation on the Surrender of Lands sold irredeemably, varied according to the usual Occurrences throwing up in Grants of this kind.

OMNIBUS hanc chartam visuris vel perlecturis, salutem : Vobis notum facimus, nos A terrarum & aliorum cum pertinentiis postea scriptorum, dominum, pro certa pecuniæ summa, nobis in compositionem a B persoluta, dedisse, concessisse & disposuisse, & per hanc chartam, eidem B, (a) heredibus ejus aut cessionariis quibuscunque, in hereditatem sine resumendi facultate, dare, concedere, disponere, & pro nobis & successoribus nostris, perpetuo confirmare, omnia & singula, &c. [*Inferendæ hic terræ aliaque disposita*

(a) *If the Investiture is renewed to the Resignatory himself. But say, — eidem B literis assignationis modo postea dicendo jus habenti, if it is renewed to his Assigny. And say, — eidem B defuncto patri D heredi deservito & retornato, if the Charter is granted to his Heir getting Right by Service and Retour.*

sita prout in dispositione habentur, tunc pergendum] cum omni jure & titulo, quæ nobis ex hisce terris, aut ex earum obventionibus, quovis modo competunt (a). *Quæ quidem terræ & alia modo narrata, ad C antea pertinēbant, a quo, per procuratorem suum in hunc finem, per potestatem procuratoriam in dispositione, data, &c. in gratiam B, & ejus successorum ab illo concessa, constitutum, apud Edinburgum, — die mensis —, anno Æræ Christianæ millesimo septingentesimo tricesimo tertio, in manus nostras legitime resignata fuere, in favorem illius B, heredum ejus sive cessionariorum, ut iis novum in debita forma infeofamentum, hereditarie, sine redemptionis facultate, in iisdem fieret: Sub hisce tamen legibus & conditionibus, &c. [Si sub conditionibus conceditur transmissio, hic inferendæ sunt; sin autem nullæ sint, prætermittatur hæc clausula, & in utrovis eventu sic postea procedendum]* ut authenticum illius resignationis instrumentum, a D Notario perfectum, latius tenet (b). Tenendæ autem de nobis & ha-

B b 2

bendæ

(a) It is worth the noticing, that the dispositive Clause ought always to be regulated by the Instrument, or rather by the Procuratory, of Resignation upon which the Charter proceeds, whatever is the Nature of the Writing wherein it is contained; and while one takes this for his Rule, he can hardly go wrong; whereas if the Charter is drawn up disconform to the Procuratory, it will in so far be ineffectual against those who may happen to derive Right from the Resigner by a singular Title.

(b) The modus vacandi or Quæquidem, as it is called, shewing how the Fee returned to the Superior, is variously expressed, according to that particular Method by which it actually reverted; whether it was by the voluntary Resignation of the first Vassal,

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bendæ sunt hæ terræ & alia superius recitata, a dicto B heredibus ejus & successoribus, &c. [*Hoc*

in

Vassal, by his Bastardy, or through the Failure of an Heir to represent him, in which two last Cases (and until of late, in the Case of Forfeiture also) the King being called to the Succession in right of his Prerogative, presents a Donatary to the proper Superior in his Vassal's stead. If the Fee returned the first of these ways, namely, by the Surrender of the prime Vassal, Investiture may be reassigned either to the Acquirer himself, and then the Quæquidem is expressed as above; or it may be given to his Assigny, deriving Right to the Deed of Alienation before Resignation is made by the Cedent: And in that Case it is written thus,

— Quæ terræ & alia jam enumerata, ad C antehac attinentia, ab illo in D heredum ejus & assignatorum gratiam, per dispositionis literas in id ipsum perfectas, datas —, erant alienata, ut in hisce literis, resignationis procuratoriam aliasque clausulas complectentibus, videndum: Eodem modo, prænominatus D, per literas suas assignatorias, datas —, designato B & suis, omnes & singulas terras aliasque prædicta & postea dicenda, transtulit & alienavit, quos, scriptis harum terrarum & evidentiis, cessionarios suos constituit, præsertim dispositioni prænarratae iisdem a C concessæ, resignationis procuratoriae, & aliis omnibus inibi inscriptis clausulis, modo in eadem assignatione plenius narrato: Simili modo, terræ atque alia vendita, cum pertinentibus, ab eodem C, per procuratorem suum, hoc mandato, in dispositione ab eo in gratiam D concessa, oneratum, nobis legitime resignata fuere, in favorem, & ut eorundem novum fieret infeofamentum illi B jus ut præfertur habenti, & heredibus suis aut assignatis quibuscunque; ut in authentico de hac re instrumento, sub manu F Tabellionis, dato —, habetur.

If the Purchaser die before Resignation is made in his favour, his Representative acquiring Right to the Procuratory by a general Service, may complete the Alienation the same way his Predecessor might have formerly done it. When the Investiture is renewed to one under this Character, the modus vacandi is in this Form: — Quæ quidem terræ, &c. ad C prius pertinere, & in gratiam defuncti D jamjam designati, heredum ejus

in loco, tenendi genus inferitur, per autoris infeofamenta ordinandum, & tum ſcribendum] in feodo & here-

ejus & assignatorum, hereditarie, ſine redimendi facultate, per literas diſpoſitionis, datas —, ab illo alienata fuere; ut hæ literæ, reſignationis procuratoriam & alias clauſulas habentes, latius tenent: Quæque etiam terræ, & alia deſcripta, ab eodem C, per ejus actornatum, in id iptum, per literas procuratorias in hac diſpoſitione complexas, ordinatum, apud Edinburgum, — die menſis, &c. nobis reſignata fuere; ad novam inveſtituram perficiendam præfato B, heredi generali deſuncto patri ſervito & retornato, & hoc modo jus validum prænarata diſpoſitioni, & inibi inſertæ reſignationis procuratoriæ, & terris aliis per hanc alienatis habenti, & hujus B heredibus ſive ceſſionariis quibuſcunque, hereditarie, abſque retrovendi pacto; ut authenticum inſtrumentum a D Tabellione conſectum pleniffime teſtatur.

Again, if the Purchaſer die after Reſignation is made in his favour, and before he hath obtained a Charter from the Superior, the Inveſtiture in that Caſe may ſtill be renewed to his Representative; but then the modus vacandi is in this Form:— Qua terræ, &c. olim attinebant ad C, per cujus advocatum, in diſpoſitione data —, ab illo, deſuncto D heredibus ſuis & ceſſionariis, perfecta, in hunc finem conſtitutum, nobis per fuſtem & baculum ut moris eſt, reſignata fuere; eo conſilio, ut designato D fuiſque nova in eiſdem daretur inveſtitura, hereditarie ſine reverſione, in forma debita & conſueta; ut ratum hujus facti inſtrumentum a B Tabellione ſcriptum, datum —, fuſius tenet: Quibus diſpoſitionis literis, terris & aliis per has tranſmiſſis, & reſignationis inſtrumento inde ſecuto, præfatus B filius & heres deſuncto patri ex lege agnitus, & in Cancëllariæ libris pro tali relatus (ut per ſervitii retornatum, datum, &c. patet) indubitatum habet jus.

And if the Reſignation proceeded on the Procuratories contained in two or more ſeparate Diſpoſitions, it is in this Form:— Qua quidem, terræ & baronia de A, terras aliaque memorata complectens, olim ſpectabant ad C, & per actornatum ſuum, quem per poteſtatem procuratoriam in diſpoſitione prædicto B ab illo facta, de dato —, inſcriptam, eo nomine conſtituit,

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hereditate in perpetuum, per omnes suas metas & limites, prout in longum & latum tendunt, & cum

in manus nostras apud, &c. ad legem & praxin diutinam resignatæ fuere: Et quæ terræ de B, cum pertinentiis, dispositæ, ad D prius pertinuerunt, & ab illo per procuratorem, &c. loco & tempore prædictis nobis etiam debite resignatæ erant, in favorem, & ut nova investitura in hisce terris, baronia, mola & aliis resignatis, præfato B & suis in forma debita concederetur; ut in instrumento ab E Notario publico super has resignationes factæ, videre est.

When Lands held of a Subject fall to the King by Bastardy, or as ultimus heres, his Majesty is under a kind of Necessity to present a Donatary to that Superior, to supply the Place of his former Vassal; because the Sovereign himself cannot be the Vassal of any of his own Subjects. Charters getting Birth from a Letter of Presentation by the King, differ in nothing from those that have their Origin in a voluntary Act of Resignation, except in the modus vacandi, which, if the Lands became vacant by the Vassal's being born a Bastard, and deceasing without lawful Issue of his own Body, is mentioned thus: — Qua terræ, &c. cum pertinentiis alienatæ, antea fuere C, qui nothus, & in harum terrarum feodo sine legitimis ex suo corpore procreatis heredibus, mortuus, eadem per hujus Regni leges, & inhærentia coronæ privilegia, in manus supremi Domini nostri Regis pervenire; qui per literas suas nominatorias, sub sigillo quadrantali, quod magni sigilli testimonium vulgo nuncupatur, nobis in effectum infra memoratum inscriptas, eundem B, heredes ejus & cessionarios, nominavit & obtulit, hereditarios nobis in hisce terris tenentes & vassallos, prioris tenentis nostri C loco, cujus bastardiæ causâ, & sine legitimis ex corpore suo procreatis heredibus mortis, terræ hæ in manus Regias, ut dictum est, cesserunt, ut in hisce literis præsentationis, datis, &c. latius recitatur.

But if the Right of Succession fell to the King as ultimus heres, it is mentioned thus: — Qua terræ, &c. ut dictum dispositæ, prius ad C pertinebant, & illo, nullis post se relictis qui in hisce terris jure sanguinis succedere possent, mortuo, jus successionis in iisdem, in S. D. N. Rege, virtute regię suæ prærogativæ,

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cum omnibus suis juribus & privilegiis quibuscunque. *Reddendo* inde quotannis, nobis & successoribus nostris, &c. [*Hic distincte inscribendæ sunt*

gativæ, & per leges & diuturnam regni usitatam praxin est terminatum: Et Dominus Rex per literas suas præsentationis, sub sigillo quod magni sigilli testimonium est, nobis in effectum postea narratum adscriptas, eundem B, heredes ejus & assignatos nominavit, hereditarios nobis in hisce terris aliisque modo repetitis, tenentes & vassallos futuros, loco C prioris nostri vassalli, cujus decessus, ut præfertur, ratione, jus successionis in iisdem, Regi modo prædicto devolutum est; ut in hisce literis, datis, &c. plenius habetur.

The Charter sometimes contains a Clause de novo damus, disposing the Fee as it were by an original Right. This Clause takes place immediately after the modus vacandi, and useth to be very fully expressed, thus: Præterea, per hanc chartam, plaribus & gravibus de causis, de novo dedimus, concessimus & disposuimus, sicuti eidem B, heredibus suis & assignatis, in hereditatem absque redimendi potestate, de novo damus, concedimus & disponimus, omnes & singulas terras, villas, decimas, molas, terras molendinarias, & alia generatim & speciatim infra recitata, sciz. [*Repetenda hic terra & alia disposita*] una cum omni jure & titulo, ad nos, heredes aut successores nostros, quæ aut pertinent aut pertinere possunt, vel in ipsas terras, vel in earum census, ratione wardæ, non-introitus, maritacionis, eschetæ sive simplicis sive usufructuariæ, recognitionis, disclamationis, purpresturæ, infeofamentorum servitiorum seu retornatum reductionis, totius aut majoris feudi partis alienationis, aut per priorem vassallum ob non solum canonem amissionis, ob non confirmata infeofamenta, aut propter clausulas irritantes aut resolutivas in recentibus sive antiquis rerum dispositarum infeofamentis narratas, ullamve aliam ob clausulam seu factum quodcunque hujus chartæ datam præcedens; iisdem omnibus, omnique alia actione, quæ nobis aut nostris in præmissis competunt, in gratiam designati B & ejus successorum, nunc & in perpetuum remissis, & habita hac renunciatione tam efficaci & in omnibus valida ac si specialissima foret, generalitati huic indulgendo in æternum.

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sunt præstationes, modo quo in proxima autoris charta habentur, in qua, si præstationes generalibus describuntur terminis, satius esset easdem de prima investitura verbatim transcribere, tunc inserendum] pro omni alio onere aut præstatione, quæ hisce de terris aliisque prius enarratis, in futurum a nobis exigi poterit aut requiri (a). *Insuper, vobis ———, & vestrum cuilibet, Balivis nostris*
ad

(a) *There is one Circumstance particularly that operates a Change in the Stile of the Reddendo, which is too material not to be considered; and it is this, that the Fee is sometimes resigned to the Superior, on purpose that the Tenure may be converted from one kind to another; as, when the Holding, being simple, is to be changed into Taxt-ward; which is done by adjecting the following or some such like Clause to the Foot of the Reddendo: —*
Provisum autem & concordatum est, quod etsi terræ, baroniæ & alia, cum pertinentiis, prædisposita, in nostras aut successorum nostrorum manus in posterum devenerint, five wardæ five non-introitus ergo, memorato B suisque eadem possidere, redditusque & proficuas earundem recipere, quoad in horum alterutro posita sunt statu, licitum erit; pro soluta nobis & nostris quotannis, ad duos anni terminos, festa sciz. Pentecostes & Sancti Martini, per æquas portiones, pro warda, — moneta Scoticæ summa; ob non-introitum, & ante & post actionem declaratoriam, simili summa; ad cuiusque heredis introitum, tanta; ad cuiusvis heredum maritagium quoties occurrer, summa —; & summa — quotannis, pro escheta usufructuaria memorati B aut ejus dictorum quodocunque ceciderit, durante ejus vita cujus escheta in manus nostras cessura est: Quas casualitates per hanc chartam taxavimus, & fixas & certas ut præfertur reddidimus; disponimus simul, nosque & successores nostros disponere obligamus, omnes casualitates wardæ, non-introitus, relevii, maritaggi, aut eschetæ usufructuariæ quotiescunque acciderint, cum omni ex iis proveniente commodo, in gratiam B & ejus supradictorum, ob solutos hosce liquidatos redditus in eventibus modo recitatis; etiamsi ter-
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ad finem post dicendum constitutis, salutem: Post
visam hanc chartam, sasinam five possessionem, ac-
tUALEm, realeM & corporalem, prænominato B, in
omnibus & singulis terris, baroniis & aliis prius e-
numeratis, quæ omnia pro repetitis habentur, illico
exhibere vobis mandamus; sibi, vel actornato suo,
paucillum terræ & lapidis de singulis hisce terris
desumptum, & alia possessionis sýmbola usitata,
tradendo; & hoc nullo modo omittendum: Quem
in finem, vobis aut vestrum cuilibet plenam com-
mittimus potestatem. In quorum testimonium,
hanc chartam (ex chirographo D. Signeto Regio
Scribæ) apud Edinburgum, — die mensis
—, anno post Christum natum millesimo se-
ptingentesimo & trigesimo tertio, signavimus &
subscripsimus, præsentibus E & F.

Among such other renovatory Grants, as may
seem to present themselves to our View in this
C c Section,

ra & alia resignata a designato B & autoribus suis, wardæ &
relevii servitio, ob soluta & præstita redditus & servitia hisce
tenendi modis assueta, prius tenebantur, ut in chartis aliisque
investituræ scriptis in horum gratiam factis plènius recitantur:
Mutavimus etiam, & per hanc chartam, priorem tenendi for-
mam & naturam, ex simplici in taxatam guardam, vertimus &
mutamus; quod tenendi genus fore, quo terræ & alia præinse-
ta in futurum habenda sunt, declaramus. Ulterius provisum
est, quod non obstante præsentium tenore, heredi apparenti
& successoribus ejusdem B, etsi pro tempore minoribus, seipsos
servitos & retornatos, & postea in terris & aliis præfatis, de no-
bis & successoribus nostris modo præmisso tenendis, infeodatos
& sasitos obtinere licebit, cum quo, & omnibus aliis ex talis
servitii genere procedentibus commodis in perpetuum dispen-
savimus.

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Section, the moſt conſiderable are thoſe which proceed upon the Reſignation of Wadſet-lands, Rights of Annualrent, and Lands paſſed over for the Relief of one's Cautionry.

1. *Charter on the Reſignation of Wadſet-lands.*

OMNIBUS hanc chartam viſuris vel audituris, notum ſit, me A, terrarum & aliorum inſcriptorum dominum, dediffe, &c. B, & ſponſæ ſuæ C, ac diutius ex illis viventi, in conjunctum feodum & redditum vitalem, & legitimis ex iis natis aut naſcendis heredibus, quibus deficientibus, ejusdem B heredibus alteris aut ceſſionariis quibuſcunque, in hereditatem, redimenda tamen modo poſtea dicendo, omnia & ſingula [*Inſcribuntur hic terræ, aliæque, ut in contra-ctu habentur.*] Quæ quidem terræ, & alia modo narrata, olim attinebant ad D, & ab illo, & a ſponſa ſua E, juſ in eadem habente, mutuo cum conſenſu, & invicem alterius factis aſſentientibus, per procuratorem, (cui id ipſum, in oppignerationis contractu, inter eundem D ſuamque ſponſam ex una, & B ejusque ſponſam ex altera parte inito, de dato, &c. erat mandatum) mihi, apud —, — die menſis, &c. reſignata fuere, in gratiam, & ut novum in iisdem concederetur infeofamentum, designato B, ſponſæ ſuæ, & eorum prædictis, modo quo dictum eſt, debita in forma: Redimenda tamen, dummodo ſolventur, eidem B, ejus conjugi, eorumque præfatis, primaria ſumma —, & alii quidam nummi in eodem

dem inscripti contractu, modo quo in hoc recitarum, ut in authentico, eo referente, instrumento, sub manibus F Notarii publici latius exprimitur. *Quaque* simul terræ & alia, cum pertinentiis, superius repetita, *tenenda* sunt & *habenda* ab eodem B, uxore C, eorumque sæpessatis, quibus deficientibus, ut præfertur, de me & meis, in feudifirma five emphyteosi, feodo & hereditate, donec fiat redemptio, cum omnibus suis juribus, utilitatibus, & privilegiis quibuscunque. *Reddent* tamen inde per annum, mihi & successoribus meis, feudifirmas, aliaque debita, servitia & præstationes, in memorati D autorum in hisce terris investituris narrata, pro omni alio onere inde, donec redimuntur, exigendo. *Præterea*, vobis, &c. volo & jubeo [*Inserendum hic sasinæ præceptum, forma communi,*] sub reversione autem semper, modo prædicto. In quorum fidem, &c.

2. *Charter on the Resignation of an Annualrent.*

OMNIBUS & singulis, in quorum manus pervenire poterit hæc charta, salutem. Noveritis me A, terrarum & aliorum inferius scriptorum, ex quibus redditus annuus subinsertus capiendus est, dominum, dedisse, &c. & per hanc chartam dare & concedere B, heredibus suis aut cessionariis, hereditarie, modo infra dicendo revertendum, totum & integrum redditum annum —, aut quemvis annum redditum, primariæ summæ —, per hujus regni leges congruentem, quotannis, ad duos anni terminos, festa sciz. Pen-

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tecostes & Sancti Martini, per æquales partes, capiendum, ex omnibus & singulis [*Terræ & alia, ut in hereditaria narrantur obligatione, hoc in loco inferenda,*] aut ex quavis earum parte, vel ex redditibus, censibus aut firmis eorundem. *Quæ* terræ & alia, in hereditatem attinebant ad C, eadem a me domino tenentem; *Quique* redditus annuus, ex hisce terris capiendus, ab illo, per actornatum suum, in hunc finem, in obligatione hereditaria, memorato B ab illo concessa, data, &c. constitutum, mihi resignatus est, in gratiam, & ut detur nova investitura, designato B, heredibus suis aut assignatis, hereditarie, sub revertendi facultate, modo quo in præfata obligatione narratum est; sicut authenticum, super hanc rem, sub manu C publici Notarii, factum instrumentum, datum, &c. tenet. *Tenebunt* autem annum hunc redditum ille B & ejus successores, de me meisque, in libera alba firma & hereditate, cum omnibus libertatibus ac privilegiis, dum redimatur. *Reddito* inde quotannis, mihi & meis, a B & suis, monetæ Scotticæ denario, super terrarum solum, ad Pentecostes festum, albæ firmæ homine, dummodo petatur; pro omni alio onere quocunque. *Porro*, vobis, &c. præcipio & mando, quod illico visis præsentibus, hereditarium statum & fasinam, totius & integri præfati annui redditus —, dicto B tradatis, & si variari acciderit usuram, talis annuitatis, primariæ summæ —, per regni leges pro tempore congruentis, ad dictos terminos, per æquales portiones, de terris & aliis supra designatis, aut ex aliqua earundem parte, aut ex censibus earum & redditibus

redditibus paratioribus, capiendi; per paucilli terræ & lapidis ex hisce terris deprompti, & numeri insuper denarii, ut moris est, eidem B vel suo certo actornato, præsentium latoribus, traditionem; idque nullo modo omittatis, &c. Redimendi autem semper modo prædicto. In cujus rei testimonium, &c.

3. *Charter on the Resignation of Lands in favour of one for Relief of Cautionry.*

OMNIBUS &c. notum sit, me A, &c. dedisse, &c. B, heredibus suis aut cessionariis, hereditarie, sub conditionibus postea recitandis, tota & integra [*Hic inferre terras, &c. ut in obligatione tenentur.*] Quas terras & alia præmissa, ad C, qui eadem a me domino superiore tenebat, prius pertinentia, ejus procurator, in hereditaria relevii obligatione, prænominato B ab eo concessa, de dato, &c. hanc potestatem nactus, in manus meas per fustem & baculum, ut moris est, in gratiam, & ut novum in debita forma concederetur infeofamentum B, suisque memoratis, resignavit; sub hisce tamen legibus & conditionibus, [*Hic provisiones in obligatione insertas inscribe, præsertim hæc, quæ quando incunda possessio & habenda redemptio, designant, & exempli gratia sequentes adducimus.*] Quod B ejusque dictorum accessio, in harum terrarum possessionem, & earum reddituum, prænarratæ obligationis virtute, & inde sequendi infeofamenti, perceptionem, usque dum pro debito in præscripta obligatione designato, aut ex eo aliqua

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qua parte distringuntur, differenda est; ex quo tempore, recitatas terras districtioni appropportionatas, quoad a præfato debito liberentur, & pro damnis & impensis in hoc nummis satisfidetur, possidebunt; quo facto, designatus B, in gratiam ejusdem C, heredum ejus aut assignatorum, terras aliaque præmissa, omni habili modo quo de jure, abnuere & redisponeere tenetur: Ut ratum de hoc instrumentum, sub D Tabellionis manu, datum, &c. latius exprimit. . *Tenenda*, & quoad eadem possidebunt habenda, &c. *Redditis* inde quotannis, mihi, heredibus meis & successoribus, feudifirmis, aliisque debitis & præstationibus in sæpefati C autorum in harum terrarum investituris expressis, pro omni alio onere, &c. *Insuper*, vobis, &c. [*Sasine præceptum hoc in loco inscribendum, tunc addendum,*] sub facultate supra recitata omni modo, In quorum fidem, &c.

S E C T. II.

Of Charters of Confirmation.

IF the Purchaser designs to perfect his Right by Confirmation, he makes use of the Precept of Sasine contained in the Disposition, upon which he first takes Sasine, and afterwards, if the Sovereign is Superior, passeth and compoundeth a Signature of Confirmation in the Exchequer, gets Precepts upon it under the Signet and Privy Seal, and in the Issue obtains a Charter of Confirmation of the Infestment. This Charter is also recorded

ed in the Register of the Great Seal, and hath the same Seal annexed to it : But there is no occasion for a second Saisine, nor indeed can there be any, unless the Charter contains a Clause of *Novo damus* ; for the first Saisine, once it is confirmed, rendreth the Alienation complete. And if the Lands are held of a Subject, the Method is still the same, with this Difference, that the Acquirer hath nothing to do with a Signature of Confirmation, nor with any of the publick Seals and Records, which, in the first Case, the Charter and its Concomitants must necessarily pass through.

Charters of Confirmation are of two Sorts : viz. They either relate to Rights made by the Vassal to be held of himself, called a *base Holding*, or a Right *de me* ; or to those granted by him to be held of his Superior, called a *publick Right*, or a Right *a me*.

The Design of a Confirmation in the first Case is, to guard against the Danger that may ensue on the Delict of the interjected Superior, by whose Trespass, if the Fee is afterwards laid open to the mediate Superior, the Subvassal, in consequence of the Confirmation, may claim to hold of him in the Delinquent's stead : And Confirmations of the second kind are absolutely necessary towards the Completion of the Right ; because Infestments *a me*, in the Construction of Law, are accounted null till they are confirmed by the Superior.

When an Infestment proceeds on a Precept of Saisine

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Safine contained in a Deed, by which the Grant-
er is bound to give Infeftment of both Kinds, and
the Safine relates particularly to neither of the
two, it may be confirmed either as an Infeftment
a me, or as one *de me*, and be either publick or
bafè at the Will of the Receiver: And which
foever of the Ways the Party inclines to hold,
the Charter of Confirmation may be framed ac-
cording to the following Model.

Charter of Confirmation.

OMNIBUS quorum interest, & in quorum no-
titiam perveniet hæc charta, salutem. Vobis
notum facio, me A, terrarum & omnium aliorum
quæ infra memorabuntur, dominum, ratum fecif-
fe & approbasse, atque per præfentes has ratum
facere, approbare, ac pro me, meisque heredibus
& fuccefforibus, in perpetuum confirmare, plenæ
& irredimendæ dispositionis literas, datas ———,
quibus B, rerum fubfcriptarum propriarius, C,
heredibus ejus aut ceffionariis quibuscunque, ven-
didit & alienavit, omnia & fingula [*Debent hic
inferi terræ atque alia, prout in difpofitione enume-
rantur.*] fub forma & modo eadem in difpofi-
tione præfcriptis tenenda; ut per hanc difpofi-
tionem, quæ diverfas alias claufulas & obliga-
tiones complectitur, fufius patet (a): Et et-
iam

(a) *If the Deed confirmed is an absolute Difpofition. But
fay, — in perpetuum confirmare, oppigurationis contra-
ctum, inter D terrarum & aliorum fubfcriptorum propriari-
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iam fasinæ instrumentum virtute prænarati concessus
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um, ex una parte, & B sponsamque suam C ex altera, initum, de dato, &c. per quem contractum, prædictus D, quibusdam causis quæ ibi traduntur id suadentibus, præfatis B & C, & ex iis diutius viventi, in conjunctum feudum redditumque vitalem, atque ex iis natis aut nascendis heredibus, quibus deficientibus, ejusdem B, heredibus aut cessionariis quibuscunque, in hereditatem, sub reversione autem in eo expressa, vendidit & alienavit, tota & integra [*Ex contractu, terras, &c. describe,*] modo quo in dicto contractu narratum, tenenda; ut idem contractus, diversas alias clausulas & conditiones amplectens, plenius enarrat, *if it is a Wadset-right: And say,* — obligationem hereditariam, a B in favorem C concessam, de dato, &c. in qua ille B, ob rationes in ea traditas, sese devinxit, eundem C, heredes suos sive cessionarios, in hereditatem, sub redimendi facultate inibi reservata, infeodare & sasire, in toto & integro annuo redditu —, vel in tali annuo redditu, per regni hujus leges, primariæ summæ — congruente, ad duos anni terminos, festum sciz. Pentecostes & Sancti Martini, per partes æquas, ex terris de —, in parochia — & vicecomitatu — sitis, vel ex ulla earum portione, aut ex earundem proventu & redditibus paratioribus, capiendo; ut in eadem obligatione, in se plures alias completente clausulas, clarius narratum, *if it is an heritable Bond. Or,* — hereditariam relevii obligationem, a B, terrarum & aliorum quæ infra ponuntur proprietarium, factam, in qua seipsum, heredes suos & successores, devinxit, C, D & E, fidejussores suos, non solum immunes reddere & exonerare, a solutione primariæ summæ —, cum summa pœnali —, & ejusdem primariæ summæ usura, quæ in obligatione ab illo principali, & ejus fidejussoribus modo memoratis, junctim & divisim, in gratiam F concessa, ex eodem dato cum præcedente relevii obligatione, sciz. —, comprehenduntur; sed etiam prædictos vades, heredes illorum & successores, hereditarie, sub legibus inibi recitatis, infeodare, in tota & integra baronia de —, terras & alia quæ in præfati B infeofamentis exprimuntur complexa, in vicecomitatu — sita; ut in eadem relevii obligatione, diversas alias clausulas in se habente, latius exprimitur, *if an heritable Bond of Relief.*

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cessus perfectum, datum —, omneque aliud quod in iisdem, vel consecutum est, vel consequi potuit, in omnibus eorum articulis sive capitibus, ratum facio atque confirmo (a). Præterea declaratur, quod charta hæc confirmatoria, in omnibus & ad omnia, tam efficax atque valida fiet, ac

(a) *But where the Right is made over to an Assigny before it is made real by Infeiment, immediately after the Confirmation of the prime Right, the Assignment and Sasine in favour of the Assigny are ratified thus :* Assignationem quoque ejusdem, de dato —, in B, ejusque heredum aut cessionariorum, gratiam, a dicto C perfectam; sasinæ præceptum in illa dispositione [*op-pignerationis contractu, aut obligatione hereditaria*] impositum, & sasinæ instrumentum in favorem designati B, jus in iisdem modo narrato habentis, de dato —, exinde consecutum; omneque aliud quod inde secutum est aut consequi queat, in omnibus eorum articulis sive capitibus ratum facio atque confirmo.

And where Confirmation is granted to one carrying Right by Service and Retour, of an Infeiment in virtue of the Precept of Sasine contained in a Deed made to his Predecessor, this Clause of the Charter relating to the Infeiment is mentioned thus : Et etiam instrumentum sasinæ, in gratiam C, filii & heredis defuncto B, per inquisitionem in cancellariæ Regiæ tabulas relatum, cogniti, juxta tenorem acti Parliamenti in id lati, inde traditæ, quod datum est, &c. & aliud omne quod in iisdem secutum est, &c. [*ut in themate.*]

With respect to the Confirmation of redeemable Infeiments, it is to be observed, that where the Faculty of Reversion is discharged before the Right itself is confirmed, it is very proper the Renunciation should be ratified also; and in that case, the Clause to which this Note belongs must be mentioned in the following Manner : — & omne aliud quod in iisdem vel consecutum est, vel consequi potest; præsertim, facultatis reversionis superius nuncupatæ abdicationem, datam —, & registris publicis — die, &c. mandatam, a prædicto B, eidem C suisque concessam, res prædispositas ad eos in posterum plenissime pertinere indicantem, eodem modo ac si nunquam existerit hæc facultas, in omnibus eorum articulis & capitibus ratum facio atque confirmo.

ac ſi inveſtitura modo dicta pleniffime & verbatim hic recitata fuiſſet, & ac ſi hæc mea ratificatio ante traditam in hiſce terris ſaſinam impetrata eſſet; cum quibus, & omnibus aliis quæ contra validitatem hujus chartæ proponi poſſunt, in æternum diſpenſavi: Reſervatis inde mihi feudi & albæ firmis, atque aliis juribus de iſdem terris ſolvi ſolitis & conſuetis, ut in infeofamentis ejusdem B originariis tenentur. In cujus rei teſtimonium hanc chartam confirmatoriam (quam in pergamenis ſigillatis ſcripſit T Edinburgenſis ſcriba) apud Edinburgum, tertio Nonarum Octobris, anno poſt partum virgineum milleſimo ſeptingenteſimo triceſimo tertio, coram teſtibus G & H, ſubſcripſi, atque annulo meo ſive armorum ſigillo munivi.

S E C T. III.

Of Charters of Adjudication.

A Decree of Adjudication, being a legal Diſpoſition of Lands or other adjudgeable Subjects, the ſame, like all other heritable Rights, is perfected by Charter and Saſine.

There is indeed one Circumſtance regarding the Completion of theſe legal Conveyances in which they are ſingular, and it is this, That a Charge of Horning againſt the Superior, to infeſt the Adjudger, is in moſt Caſes accounted equal to an Infeſtment. And again, ſome Adjudications are deemed complete Rights without Infeſtment, among which thoſe are chiefly reckoned, that ap-

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appropriate such heritable Subjects as either require no Infeſtment to their Accompliſhment, or, although they do, upon which none hath followed; and likewise thoſe of a poſterior Date to another Adjudication of the ſame Subject, made effectual by Infeſtment, or a Charge againſt the Superior; becauſe theſe latter Adjudications, I mean ſuch of them as are without Year and Day of the firſt effectual one, carrying no more than the Right of Reverſion of it, are the ſame in effect with an Affignation to that Reverſion, which needs no Infeſtment to its Conſtitution.

Such Adjudications then as require Infeſtment to their Completion are realized thus: Where the Lands are held of the Sovereign, Charter and Saſine are obtained in the ſame Manner as upon a Diſpoſition, that is, by paſſing and compounding a Signature in the Exchequer, and getting Precepts upon it under the Signet and Privy Seal; but where the Adjudger hath to do with a ſubaltern Superior, he ordinarily compells him to give Saſine by a Charge of Horning, and at the ſame time offers him a Charter ready for ſigning, and a Year's Rent of the Lands withal; and where the Holding is Burgage, the Magiſtrates of the Burgh in which the Tenements ly, being ſued by the like Diligence, ſeldom withſtand the Charge, but paſs the Infeſtment forthwith, though they rarely ever give a Charter.

Charters of Adjudication bear a very near Semblance and Analogy to Charters of Reſignation, as may be diſcerned from a Compariſon of the one

one with the other. Amidſt ſome other inconfiderable Particulars, they differ mainly in this, That as Adjudgers, for the moſt part, cannot inſtruct the Tenor of their Author's Inveſtiture, the *Reddendo* of the former is for ordinary expreſſed in general Terms; though, if that is look'd on as an Inconveniency, as no doubt it is, the Superior may be compelled, without a new Compoſition, to renew the Infeſtment and make it ſpecial, how ſoon the Adjudger is in a Capacity to exhibit his Author's Title.

The Charters I am treating of differ likewise among themſelves in the Matter of their Form, by reaſon of certain Circumſtances ariſing from the particular Quality of the Adjudication on which they proceed. Now, Adjudications are obtained, either for the Payment of a clear and liquid Debt; or in implement of a Diſpoſition, or Obligation relative to a Conveyance of the Subject; or in purſuance of a Proceſs for expediting the Sale of a Bankrupt's Eſtate: And the following Inſtance may ſerve as an Exemplification of the Charter, be the Caſe as it will.

Charter of Adjudication.

OMNIBUS hanc chartam viſuris vel perlecturis, ſalutem. Vobis notum ſit, me A, &c. ut quibuſdam cornuationis literis, in id ipſum paratis, & contra me executis, obedientiam præſtarem, dediſſe, conceſſiſſe & diſpoſuiſſe, & per hanc chartam, B, heredibus ſuis aut ceſſionariis, in hereditatem,

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reditatem, ad formam autem & tenorem acti Par-
liamenti in id ipſum facti redimendam (a), dare,
&c. omnia & ſingula [*Hoc in loco, ex decreto ex-
cerpenda ſunt terræ & alia quæ de hoc tenentur do-
mino, & ſic procedendum.*] Quæ terræ & alia pri-
us nuncupata, olim attinebant ad C, & per de-
cretum & ſententiam adjudicatoriam, a Dominis
Concilii & Seſſionis, — die — latum, ab
eo adjudicata fuere (b), atque eidem B ſuiſque
appropriata, in ſolutionem iis totalis ſummæ —,
& quarundam aliarum quæ in eodem decreto nu-
merantur ſummarum, ut per idem fuſius patet (c).

Te-

(a) Or, — in hereditatem, abſque redimendi poteſtate, if
the Charter proceeds on a Decree of Sale, or on an Adjudication
in implement of an Obligement to infeſt.

(b) But ſay, — a D filio ſuo primogenito (qui heredita-
tem paternam adire, & ſeſe defuncto patri heredem ſtatueret,
actione compellatus, idem facere renuit) adjudicata fuere, &c.
in a Caſe where the Eſtate of one deceased is adjudged from his
apparent Heir, renouncing the Inheritance after a Charge to en-
ter upon it. And ſay, — a D filio ſuo natu maximo, in he-
reditatem defuncti patris introire, per literas mandatorias, cum
generales tum ſpeciales, compellato, adjudicata fuere, &c. if the
presumptive Heir, being cited to enter by Letters of general Charge,
doth not renounce; becauſe, in that caſe, he muſt alſo be ſued
to enter Heir in ſpecial, before the Eſtate of the deceased Perſon
can be evicted, either for his own proper Debt, or for that of the
Defunct, now made his by the Effect of the general Charge.

(c) The only conſiderable Diversity occaſioned in the Stile of
the Grant, from the particular Quality of the Adjudication,
lies wholly in the modus vacandi, or ſecond Clause of the Char-
ter: Which, if the Adjudication is obtained for Payment of a
clear and liquid Debt, is expreſſed as above; but if in imple-
ment of a previous Contract or Obligement to infeſt, it is ex-
preſſed thus: Quæ terræ, &c. ad C hereditarie ſpectabant, at-

que

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Tenendæ autem & habendæ sunt terræ & alia modo nominata de me, heredibus meis & successoribus, ab illo B, heredibus suis five cessionariis, in feudo & hereditate, usque dum redimuntur (a), cum omnibus juribus, utilitatibus & privilegiis quibuscunque. *Redditis* inde nobis feudi & albæ firmis,

que sententia & decreto Dominorum Concilii & Sessionis adjudicatorio, — die — lato, adjudicata fuere, & eidem B suisque, ut impleretur quoddam alienationis compactum inter eundem C & B conventum, appropriata; per quod decretum, harum terrarum & aliorum quæ modo dicta sunt domini, eundem B & suos in iisdem absolute & plenissime sasure jubentur, & in hunc finem, literæ conuentionis contra hosce superiores, modo ibi expresso, dirigendæ statuuntur; ut ex eodem decreto clariùs videre est. *And, if in favour of the Purchaser of a Bankrupt's Estate, it is expressed thus: Quæ* terræ, &c. ad C hereditarie spectantia, in acti Parlamenti in id lati obsequium, publica auctione vendenda, ut solverentur ex pretio ejus debita, exposita sunt; quæque a dicto B empta, illi suisque plenissime adjudicata fuere, prout venditionis decretum per Dominos Concilii & Sessionis in ea re prolatum, latius tenet.

Charters granted to the Adjudger's Heir need not contain a Narration of the Service; only in the dispositive Clause, where he is first named, you give him the superadded Appellation of Heir served and retoured to the deceased A his Father, or the like, and afterwards proceed as if the Adjudication were obtained at his own Instance, with such a trivial Alteration in the Rehearsal of the Decree as is unworthy to be noticed. But when the Charter is granted to the Adjudger's Assigny, it is proper the Assignation should be mentioned, as thus: Immediately after the modus vacandi say, — in quod decretum, resque per illud adjudicatas, & scripta in quibus fundatum est, jus habet idem B, per literas eorundem assignatorias, sibi & suis designato D concessas, de dato —; ut per hæc literas etiam manifestum est.

(a) Or, — in feudo & hereditate in perpetuum, *if the Charter is founded on a Decree of Sale, or an Adjudication in implement.*

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firmis, aliisque servitiis & juribus, hisce de terris solvi solitis & consuetis. *Insuper, vobis, &c.* [*Præceptum sasine communi in forma inferendum.*] In cuius rei testimonium, &c.

Though Precepts of *Clare constat* cannot regularly be reckoned among the Number of renewed Dispositions of the Fee, yet, since they are not far different from each other in Effect, I offer them for the Subject of the remaining Part of this Section.

A Precept of *Clare constat* is, *A written Deed, by which a Superior, acknowledging that such a one died last vest and seized in the Fee of certain Lands, or others, held of him by such a Tenure; and that such another Person, mentioned in the Precept, is the nearest Heir that can succeed to the Deceased in the Subject; commands his Bailie, therefore, to invest this last Person with the Inheritance.*

These Precepts being sometimes founded on special Retours, and at other times granted to apparent Heirs without a previous Service, have different Effects according as the Precept is of the one sort or the other. Thus, a Sasine on the former verifies the Receiver to be Heir to his Predecessor & *active* & *passive*; that is, he is thereby intitled to sue for, as well as made liable in payment of all his Predecessor's Debts: Whereas a Sasine on the other, namely, the bare Precept, renders the Obtainer liable *passive* to his Predecessor's Debts, at the same time it hardly gives him

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him Right *active* to the specifick Subjects contained in the Precept. For a Specification of the first sort, take the following Instance.

Precept of Clare constat founded on a special Retour.

A, Terrarum & aliorum postea dictorum dominus, minus, vobis ———, aut vestrum cuilibet, Balivis meis in finem postea dicendum constitutis, salutem. *Quemadmodum clare constat, & per inquisitionis ——— die mensis, &c. habitæ, & in Cancellariæ Regiæ libris recordatæ, exemplar, [vulgo dicimus retornatum,] mihi notum est atque manifestum, defunctum B, præsentium latoris C patrem, ad fidem & pacem cum Rege mortuum esse, & ultimum fuisse vestitum atque fasitum in feudo omnium & singulorum [Inscribendæ sunt terræ & alia, sicut in defuncti designantur investituris.] eundemque C legitimum & proximum esse heredem, qui in mortui sui patris hereditatem succedere potest; quodque legitimæ sit ætatis (a), & quod terræ & alia memorata de me domino superiore in capite habeantur (b), in [Tenendi genus describendum*

E eest.]

(a) It is unnecessary to mention the Heir's being of lawful Age, unless the Holding is Ward; and even then that Clause is superfluous, if there is a Dispensation for the want of Age, as there commonly is, in the antecedent Investments.

(b) If the Superior is to make over the Fee by a new Concession, you here break off from the Text, and write thus: — Et quod terræ & alia prius nuncupata, de me domino superiore in capite, modo & tenore subscripto, pro solutis inde mihi ser-

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est.] perfolutis inde mihi [*Expediret ut hæ præstationes plenissime & distincte describerentur, etsi persape ad priora investituræ scripta referatur, sub hoc modo.*] redditionibus & juribus, quæ in originariis ejusdem C prædecessorum in hisce terris infeodationibus recitantur: Vobis igitur præcipio & mando, quod extemplo, viso hoc meo præcepto, statum hereditarium, sasinam atque possessionem, realem, actuale & corporalem, omnium & singulorum terrarum & aliorum, cum pertinentiis, prius denominatorum, præfato C heredi in speciali defuncto patri, ut dictum est, ex lege cognito, exhibeatis; tradendo, vel in suis vel advocati sui manibus, paucillum terræ & lapidis ex fundo harum terrarum desumptum, &c. ut moris est, &c. (a). In quorum fidem, &c.

For a Specimen of the second Kind of these Precepts, to wit, that granted to apparent or presumptive

vitiis & redditionibus infra dicendis, teneantur: Quibus rationibus, aliisque causis id suadentibus, de novo dedi, concessi & disposui, atque prædicto C, heredibus suis sive cessionariis, in hereditatem, absque ulla reversione aut regressu quocunque, de novo do, &c. totas & integras terras, villas, molas, decimas, patronatus aliaque designata, quæ omnia pro expressis & enumeratis habentur; cum omni jure & titulo, &c. [*Videre liceat clausulam illam de Novo-damus in chartis resignatoriis, ad paginam 199.*] Tenenda tamen & habenda sunt hæ terræ atque alia modo descripta, de me & meis, ab illo C & suis, in, &c. [*ut in themate.*]

(a) It is to be remembred, that Sisine cannot be taken on a Precept of Clare constat after the Death of the Granter, no more than after that of the Receiver; because by the keeping up of such Precepts, the Superior might be defrauded of divers Casualties.

sumptive Heirs, I offer you the following one, of which the Subject-matter is supposed to be an Infeftment of Annualrent.

Precept of Clare constat, the Obtainer being Heir-apparent, not served and retoured, to his Predecessor.

A, Annuitatis five annui redditus post dicendi dominus, vobis, &c. *Cum* mihi clare constet atque notum sit, defunctum B, C præsentium latoris avum, mortuum esse ad fidem & pacem regiam, ultimo sasitum & vestitum, in toto & integro annuo redditu —, vel in tali annuo redditu summæ primariæ — congruente, & per hujus regni leges pro tempore respondente, quotannis ad festum Pentecostes & Sancti Martini pares per portiones capiendo & colligendo, ex hisce meis terris, [*Terras, &c. ex prædecessoris sasina transcribas.*] vel ex eorum aliqua parte, five ex horum optimis & paratioribus proventibus; ut per instrumentum sasinae, (quæ, virtute obligationis hereditariæ in ejus gratiam — die — a me concessæ, tradita fuit,) datum —, & in acta publica — die — relatum, manifestum est: *Et cum* mihi sit æque notum, eundem C, per successionis leges, defuncto avo proximum esse heredem; & hanc annuitatem a me immediato domino superiore, in alba firma, pro soluta mihi redditione prædicta in infeodatione nuncupata, haberi: Volo igitur & jubeo, &c. [*Præceptum sasinae, ad formam ejus, quod in charta annuitatis resignatoria, ad pag.*

204. *videre est, inferendum.*] Redimenda autem est hæc annuitas modo quo in dicta obligatione narratum. In quorum fidem, &c.

T I T. VI.

Concerning Instruments.

AN Instrument, in the most lax general Sense, is, *An authentick Deed or Writing, given under the Hand of a Notary-publick, as an Evidence of the Matter therein represented and set forth.*

There are divers Kinds of Instruments in use with us, of which some concern heritable, and others moveable Rights. Among the first Sort are chiefly reckoned, Instruments of Sasine, Resignation, Premonition, Consignation, Requisition and Attendance: And of the second Sort, since I am not here to treat of them, I shall only mention Instruments of Possession and Intimation, amidst a numberless Train of others that might be named. To return then to the former of those mentioned in the first Class, to wit, Sasines:

S E C T. I.

Of Sasines.

THe Property or Dominion of Lands or other feudal Subjects, acquired by Disposition, Permu-

Permutation or any other singular Title, is never understood, in the Construction of Law, to be thoroughly vested in the Person of the Acquirer; but, on the contrary, deemed to remain with his Author, until he hath perfected the Right by Sasine. This Sasine I speak of is, *The Instrument of a Notary, bearing the Delivery of symbolical Possession of the Subject passed over, by the Superior or his Bailie, to the Vassal or his Attorney, on the Ground of the Fee*: A Requisite, as I had occasion to observe elsewhere, so essential to the Completion of the real Right in Lands, that it cannot be supplied even by a real and natural Possession. Concerning the constituent Parts of a Sasine, see *Stair, B. 2. tit. 2. § 17.* and *Craig, lib. 2. dieg. 7. § 3, — 9.*

When this symbolical Possession is given by the Superior himself, or by his Bailie in his Presence, 'tis called *Sasine propriis manibus*.

The Symbols of Possession are variable, according to the Quality of the Subject transmitted. Thus, Lands and Tenements are represented by a little Earth and Stone; a Mill, by its Clap and Hopper; Tithes, by a Sheaf of Corn; Patronages, by a Psalm-book and the Keys of the Church-door; a Fishing, by a Net; an Annual-rent, by a Penny Money, and a little Earth and Stone of the Lands out of which it is payable, &c.

Where Lands ly contiguously, one Sasine serves for all, unless they are held of different Superiors, or by different Tenures; and in either of these

these Cases, the Contiguity does not save the Trouble of taking different Sasines: But if the Lands are dispersed into distant Places, or if the Tenements are of divers Kinds, every distinct Parcel or particular Tenement requires a special Sasine; except they are either erected into the Dignity of a Barony, or united together in one Tenement; and then the Sasine of one, at the Place appointed by the Union, or on any Part of the united Lands, if no such Place is mentioned, becomes sufficient for the whole.

Instruments of Sasine of Lands in the Country, must be recorded in the general Register at *Edinburgh*, or in the particular Register of the Shire, Stewartry or Regality, where the Lands ly; as Sasine of Tenements within Burgh (which must be given by the Bailiffs, and to which the common Clerk of the Burgh can only be Notary) must be recorded in the Town-clerk's Books, within sixty Days after their respective Dates: Otherwise they are void with respect to singular Successors acquiring posterior Rights, and effectual only against the Granter and his Heirs.

Sasines are generally formed and drawn up in the same Language with the Warrants on which they proceed, whether *Latin* or *English*; and for that Reason, I have subjoined a Specimen, with large Annotations, in both Languages. That in *Latin* is as follows.

Instrument

Instrument of Sasine, the Warrant on which it proceeds being written in Latin.

IN DEI NOMINE, AMEN. Omnibus pateat & sit notum, quod, — die mensis —, in anno post natum Christum millesimo septingentesimo tricesimo tertio, regnique supremi Domini nostri Georgii secundi, Dei gratia, Magnæ Britanniae, Franciæ & Hiberniæ Regis, anno septimo, coram me Notario publico & testibus subscribentibus, comparuit A (a), & ad terrarum & aliorum quæ infra designantur solum nobiscum adivit (b); *Habens* & in suis manibus tenens (c) chartam

(a) Or, comparuit A, defuncto B patri suo heres; or, comparuit A, per literas assignatorias modo post dicendo jus habens; or, apparuit A, in suo & in sponsæ suæ B nomine; or, apparuit A, in nomine B, procurator; or, — in nomine B defuncto C fratri suo germano heredis serviti, procurator; or, — in nomine B, cessionarii modo recitando a C constituti, procurator, according to the particular Character the Person bore to whom Sasine was given.

(b) Or, &, nobis comitantibus, ad mansionis domum —, ubi, per uniendi clausulam, in charta cujus postea fit mentio comprehensam, sasina omnium terrarum, tenementorum, molarum & aliorum quæ infra numerantur tradenda est, accessit, if the Warrant contains a Clause of Union, and a Dispensation for taking Sasine at one Place, notwithstanding the Discontiguity of the Tenements.

(c) Since every particular Warrant upon which Sasine proceeds, hath something or other peculiar to itself in the Narration of it, this Clause admits of a greater Variety than any other in the whole Instrument besides. For which Reason I shall here present you with Models for narrating such Warrants of Sasine as are in use to be written in the Latin Tongue, forbearing those that are gene-

chartam quandam originariam, a B concessam, per quam, ob causas in eadem expressas, in gratiam

generally drawn up in the English to a more proper Place. The first I shall mention is that of

A Charter proceeding upon a Resignation made in Exchequer.

Habens, & in suis manibus tenens, resignationis chartam, sub sigillo in magni sigilli Scotici locum, per leges unionis inter regna initæ, substituto, datam —, per quam S. D. N. Rex, cum Scaccarii sui in Scotia Baronum consilio atque consensu, dedit, concessit & disposuit, præfato A & heredibus ejus masculis, quibus deficientibus, [ut in charta,] in hereditatem, absque reversione, omnia & singula [Terre, &c. hoc loco inferentur.] Quæ terræ [modus vacandi, sive Quæquidem, ut vulgo dicitur, & conditiones, si ulla sint, de charta describenda sunt.] Præterea, dominus Rex, cum eodem quod dictum consilio, memorato A, & heredibus masculis ex ejus corpore procreatis, quibus excidentibus, heredibus suis alteris sive successoribus modo nominatis, de novo dedit, concessit & disposuit, totas & integras terras, baroniam, & alia prius enumerata, de se & successoribus suis regiis, modo quo in illa narratum, tenenda: ut eadem charta, privilegia quædam, & in his unionis & erectionis clausulam, per quam diversæ hæ terræ, tenementa, & alia modo nominata, ab omnibus aliis terris, dominiis aut baroniis, quibus antea annexa fuere, disjunguntur, & in baroniam eriguntur, quæ in posterum baronia de C nuncupanda, cujus maneriei locus de —, primarium ejus statuitur messuagium, & salina ad illum vel in quocunque alio baroniæ loco, per paucilli terræ & lapidis traditionem, sine alterius symboli necessitate, data, pro tota sufficiet baronia, etsi tenementa minime sint contigua; ut eadem charta, inquam, hæc atque alias complectens clausulas, fusius tenet.

Narrative of a Charter on the Resignation of Lands to a Subject-superior.

— resignationis chartam, a B, harum terrarum domino superiore, concessam, per quam, propter causas in illa datas, designato A, & sponsæ suæ C, in junctum feudum redditumque

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tiam dicti A heredum, &c. in hereditatem, absque reversionis facultate, vendidit & alienavit
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tumque vitalem, & eorum filio D, atque heredibus suis aut assignatis, in feudum, hereditarie & plenissime disposuit & perpetuo confirmavit, omnia & singula [*Inscribantur terra, &c. sicut in charta enumerantur.*] Quæ terræ & alia, quorum facta est mentio, ad C prius pertinebant, &c. [*modus vacandi quo feudum in domini superioris manus est reversum, ut in charta, inferendus,*] ut illa charta, data ———, plenius habet.

A Charter upon an Adjudication, where the Lands are held of the Sovereign, is narrated thus :

———— chartam adjudicationis, sub sigillo in locum magni in Scotia sigilli, per leges unionis inter regna initæ, substituto, datam, &c. per quam Dominus Rex, cum Baronum Scaccarii sui in Scotia consilio, eidem A, heredibus suis seu cessionariis, in hereditatem dedit, contulit & disposuit, omnia & singula [*Terras, &c. de charta transcribes.*] Quæ terræ & alia modo memorata olim pertinebant ad B, a quo adjudicata sunt, [*ut in charta*] sicut per eandem chartam, clausulam unionis in se habentem, in qua clausula, fasina ad maneriei locum de C, vel in ulla alia terrarum parte tradita, pro omnibus sufficere declaratur, non obstante tenementorum discontiguitate, clarius patet. *But if the Charter is granted by a Subject-superior, you write thus :* ——— chartam adjudicationis, datam ———, per quam B, dictarum terrarum dominus superior, eidem A, heredibus suis sive cessionariis, in hereditatem, ad formam autem & tenorem acti Parlamenti in id ipsum lati redimenda, dedit, &c. [*ut in precedente exemplari ad clausulam usque postremam,*] sicut per eandem chartam, diversas alias clausulas amplectentem, fusiùs patet.

Narrative of a Precept of Clare constat.

———— præceptum fasinæ, vulgo præceptum de Clare constat nuncupatum, a B, in gratiam memorati A eo fine concessum, ut ipse A, tanquam demortui D avi sui heres, in harum
terrarum

omnia & singula [*Terræ, &c. prout in disponente chartæ clausula designantur, transcribendæ sunt; tunc sic procedendum,*] cum omni jure & titulo, quæ in hisce terris, & aliis modo nominatis, aut in eorum obventionibus, eidem B aut suis quovis modo competunt; ad formam autem & tenorem ibi præscriptum tenenda; ut charta hæc, data —, plenius enunciat (a). Quam chartam, præceptum

terrarum & aliorum quæ infra specificantur feudo investiretur; ut idem præceptum, de dato infra scripto, latius exprimit.

Narrative of a Precept of Sasine founded on a special Retour.

— præceptum sasine, ex Cancellaria regia directum, ad eundem A, heredem in speciali defuncto patri C servitum & retornatum, in diversis hisce terris, decimis, prædiis & aliis infra narrandis, investendum; ut idem præceptum, de dato infra dicendo, lucide ostendit.

It may be of some Use to take notice here, that the Sheriff and Sheriff-clerk of the Jurisdiction where the Lands ly, can only give Sasine on Precepts proceeding upon Services and Retours of Heirs to Lands holding of the Crown, though in all other Cases it matters not who is the Bailie or who the Notary to the Infeftment; the Reason of that Singularity being chiefly this, that the Sheriff may have a fit Opportunity of taking Security for the Non-entry Duties and Relief resting at that Juncture: A Thing he is in no other Occasions concerned with.

(a) When Infeftment is given to the Heir or Assigny of the prime Vassal, carrying Right to the Charter and Precept of Sasine by a general Service or special Assignment, this Clause of the Instrument concerning the Warrant, ought to be prolonged with an additional one, setting forth the Feoffee's particular Title. Thus, if it is given to his Heir, say, Et etiam in manibus habens generalis servitii retornatum, in gratiam præfati A, defuncto patri suo masculi heredis, datum —; & annuncians, quod sicuti charta, & præceptum sasine in illa narratum, in ejus persona per hunc retornatum stabilita essent, sic in rebus in hac

ptum *sasine* infra scriptum in se complexam (a), designatus A, C Balivo per idem præceptum constituto, obtulit, quem rogavit, ut mandatum & officium in illo sibi commissum præstaret (b). Cui ille annuens, chartam illam (c) in manibus accepit, & eandem mihi Tabellioni, ut testibus astantibus perlegerem & exponerem, tradidit; quod quidem feci, & ipsum præceptum in hoc instrumento ipsissimis verbis subinserui, & hæc sunt, [*Præceptum sasine hoc in loco verbatim transcribitur*] (d). Perlecta & explicata charta (e), ille quem

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supra

hac charta designatis, secundum actum Parliamentarium in id scitum, eum investiri debere. *And if it is granted to his Assigny, say,* Et etiam in manibus tenens assignationis literas, a præfato B, [*primo vassallo,*] in gratiam A prius nuncupati, heredum ejus sive cessionariorum, factas, quæ prædictam chartam & *sasine* præceptum in illa datum, cum ad finem transferunt, ut horum scriptorum virtute, idem A, rerum jam dictarum feudo, ad tenorem acti Parliamenti in id lati, exinde vestiretur; ut in hisce assignationis literis, datis —, plenius recitatus.

(a) *Add,* una cum retornatu [*sive literis assignatoriis*] jam dicto, *if Possession was given to an Heir or Assigny. But say,* — quod *sasine* præceptum, *if the Infeftment proceeded on a special Retour or Precept of Clare* constat.

(b) *But if the Superior gave Sasine propriis manibus, the Clause representing the Delivery of the Warrant is expressed thus:* Quam chartam [*sive sasine* præceptum] idem A præfato B exhibuit, interim submisit rogans, ut secundum ejus tenorem, illum in realem rerum quæ ibi transferuntur possessionem, poneret.

(c) & retornatum [*sive assignationem,*] or, — præceptum *sasine* in manibus accepit, &c.

(d) *It is unnecessary to repeat the Precept when the Superior gives Sasine with his own Hands, unless the Infeftment proceeds on a Precept of Clare* constat, or a Precept issued out of the Chancery on a special Retour.

(e) Or, perlecto & explicato *sasine* præcepto.

supra memoravi C, officii sibi commissi virtute (a), prædicto A (b), statum hereditarium, sasinam quoque & possessionem realem, actualem & corporalem, omnium & singularum terrarum, baroniarum, molarum, decimarum & aliorum quæ jamjam enumerantur, dedit; tradendo illi (c) paucillum terræ & lapidis ex diversis hisce terris desumptum, molarum crepitacula & infundibula, & segetis [*sive stipulæ*] manipulum, pro decimis, pro molis & pro terris, usitata symbola (d), ad formam & tenorem præfatae chartæ (e) in omnibus: De quibus prædictus A, a me Tabellione subscribente, instrumenta confici petiit. Hæc peracta sunt ad solum & fundum terrarum, baroniarum & molarum, quæ figillatim enumerantur (f), horam inter decimam & duodecimam ante meridiem,

(a) If *Sasine* was given by the Superior's Bailie. But say, idem B propriis manibus, if the Superior performed the Formality himself.

(b) Or, prædicto A, defuncti patris sui heredi; or, prædicto A, virtute assignationis more jam dicto jus habenti; or, designato A, in suo & in prænominatæ sponsæ suæ nomine, according to the Circumstance of the Party invested.

(c) Or, tradendo præfato A, [*the Attorney*,] ejus nomine procuratori.

(d) Or, tradendo illi [*sive dicto A*, ejus in nomine actor-nato] terræ & lapidis harum terrarum paucillum, unicum possessionis symbolum pro omnibus traditis requisitum.

(e) Add, & generalis servitii, [*sive assignationis*,] if the Investiture was given to an Heir or Assigny. But say, ad formam & tenorem sasinæ præcepti prius nuncupati, if the Investment proceeded on a Precept of Clare constat or special Retour.

(f) Or, Hæc peracta sunt ad mansionis domum de ———, ubi, secundum unionis clausulam jamjam expressam, tradenda est sasina.

em, testibus D & E, ut adessent & præmissa testarentur, rogatis & requisitis (a).

The last essential Requisite in all Instruments of Importance, under which Denomination these two, *Safines* and *Resignations*, are chiefly included, is, the Attestation of the Notary, insinuating the Authority of his Admission to the Office, and affirming the Certainty of the Facts asserted in the Instrument, from the outward Senses of Hearing and Seeing; averring withal, that he took a Note or short Draught of the whole Matter, and from thence, at the special Desire of the Party invested, drew up the Instrument, to which, he adds, he hath annexed his Name; and the Motto assumed at the time of his Admission. This Attestation and Motto are placed at the Foot of the Instrument in two Columns towards the right Hand; and underneath, or over against the Motto, the Witnesses Subscriptions are taken down, in this Manner.

ET

(a) *Safines* propriis manibus use to be supported by the Giver's signing the Notary's Instrument in Presence of the instrumental Witnesses; in which Case, this Clause, quibus etiam testibus, idem B, in præmissorum fidem & robur, instrumentum hoc subscripsit hodie & signavit, ought to be joined to that above.

 FIDES PRÆSTANTIOR AURO.

A B, N. P.

D, testis.

E, testis.

singulis, dum sic ut præmittitur dicerentur, agerentur & fierent, una cum prænominatis testibus præsens personaliter interfui; eaque omnia & singula præmissa sic fieri, vidi, scivi & audiui, ac in notam cepi; ideoque hoc præsens publicum instrumentum, manu mea [or, manu D servitoris mei] fideliter scriptum, exinde confeci, & in hanc publici instrumenti formam redegi, signoque, nomine & cognomine meis solitis & consuetis, signavi & subscripsi, in fidem, robur & testimonium veritatis omnium & singulorum præmissorum, rogatus & requisitus.

The other Specimen I am to mention, to wit, that in *English*, you have likewise subjoined, as follows.

Instrument

ET ego vero A
 B, Clericus
 Edinburgensis di-
 oceseos, Notarius
 publicus auctori-
 tate regali, ac per
 Dominos Concilii
 & Sessionis, secun-
 dum tenorem acti
 Parlamenti, ad-
 missus; quia præ-
 missis omnibus &

Instrument of Safine, where the Warrant on which it proceeds is written in English.

IN THE NAME OF GOD, AMEN. *Be it known to all Men, That on the — Day of —, in the Year of our LORD One thousand seven hundred and thirty three, and of the Reign of our Sovereign George the Second, by the Grace of God, King of Great Britain, France and Ireland, the seventh Year, In Presence of me Notary-publick and the Witnesſes ſubſcribing, Appeared A (a), and paſſed with us to the Ground of the Lands and others after mentioned; Having and holding in his Hands (b) an abſolute and irredeemable*

(a) *Or, Appeared A, as Heir to the deceased B his Father; or, — as having Right by Affignation in manner after ſpecified; or, Appeared A, as Attorney in Name and Behalf of B; or, — in Name and Behalf of B, Heir ſerved and retoured to the deceased C his Brother-german; or, — in Name and Behalf of B, Affigny ſpecially conſtituted by C in manner after ſpecified; or, Appeared A, for himſelf, and in Name and Behalf of B his Spouſe, according to the Character the Perſon bore to whom Safine was given.*

(b) *Having in the foregoing Inſtrument laid down Models for narrating ſuch Warrants of Safine as are in uſe to be written in the Latin Tongue, I need only in this to illuſtrate the moſt conſiderable Part of thoſe that never almoſt appear in any other Language than the Engliſh. And I begin with that of*

A Deed of Entail.

Having and holding in his Hands a Diſpoſition or Deed of Entail, bearing date, &c. by which B, under the Qualifications therein and afterwards rehearſed, alienated and diſpoſed to the ſaid

redeemable Right and Disposition granted by B, whereby, for the Reasons therein expressed, he
fold

said A his Son, and the Heirs male of his Body; which failing, [as in the Disposition,] absolutely and irredeemably, all and singular [Transcribe the Subjects from the Deed itself, Word for Word.] Reserving nevertheless, &c. [The Reservations and Conditions are here enumerated.] as the above said Disposition, comprehending a Clause of Infeftment, a Procuratory of Resignation, a Precept of Sasine, and several other Clauses and Conditions, more largely represents.

A Disposition of an Infeftment of Annualrent is narrated thus :

———— a Disposition granted by B, of Date, &c. whereby, for the Causes therein set forth, he sold and disposed to the said A, his Heirs or Assignies, heritably, and under Reversion in manner therein specified, all and whole an Annualrent of ———, or such an Annualrent as should correspond and be answerable to the principal Sum of ——— by the Laws of this Kingdom for the Time, to be uplifted at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, forth of all and singular [Here the Lands are named and designed.] or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Profits of the same, together with all Right, &c. Provided however, that the before mentioned Annuity be redeemable and under Reversion from the said A and his above named, upon the Terms prescribed by an heritable Bond granted by C, in favour of the said B, his Heirs or Assignies, of the Date, &c. and by the Instrument of Sasine ensuing thereon, dated, &c. and duly registred, according to the Direction of the Act of Parliament in that Behalf; as in the above said Disposition, containing a Clause of Infeftment, a Procuratory of Resignation, a Precept of Sasine, an Assignment to the aforementioned Bond and Sasine, and to the Sums of Money, Principal, Annualrents and liquidated Penalties therein related, more fully is implied.

An heritable Bond is narrated thus :

———— an heritable Bond, bearing date, &c. whereby B,
for

fold and disposed to the said *A*, his Heirs or Assignies whatsoever, heritably and irredeemably,

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all

for the Cautels therein specified, became bound and obliged to vest and seise the said *A*, his Heirs or Assigns, heritably and under Reversion in manner therein mentioned, in all and whole an Annualrent or yearly Duty of —, or such an Annualrent as should be answerable to the principal Sum of —, by the Laws of this Kingdom for the Time, to be uplifted at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, forth of all and singular [*Insert the Lands.*] or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Profits of the same; as the forementioned Bond, including a Procuracy of Resignation, a Precept of Sasine, a Clause of Redemption, and divers other Clauses and Obligements, more fully bears.

Narrative of a Contract of Wadset.

———— a Contract of Wadset betwixt the said *A*, on the one Side, and *B*, with the Consent of *C* his Spouse, on the other; by which Contract the said *B* and *C* with one Accord, in consideration of the Sum of — then paid in to them by the above *A*, alienated and made over to him, his Heirs, &c. heritably, and under Reversion in manner therein related, all and singular [*Copy out the Lands, &c. from the Contract.*] together with all Right, &c. and engaged themselves to vest and seise him in the same in manner implied in the above mentioned Contract; as the same Contract, of Date, &c. containing a Procuracy of Resignation, a Precept of Sasine, a Clause of Reversion, and several other Clauses and Articles, more amply relates.

Narrative of a Contract of Marriage.

———— a Contract of Marriage betwixt the said *A*, with the joint Accord and Approbation of *C* his Father, on the one Side, and the above *B*, with the unanimous Advice and Assent of *D* her Father, on the other; whereby the same *C*, in contemplation of the Marriage, and in consideration of the Marriage-portion therein mentioned, bound and obliged himself

all and singular [*Here insert the Lands, &c. as they are denominated in the Conveyance.*] together with all Right, &c. as the above said Disposition, bearing date, &c. and containing a Clause of Infestment *a me* and *de me*, a Procuratory of Resignation, a Precept of Sasine, and divers other Clauses and Obligements, at more length sets forth (a). Which

to vest and seise the said *A*, and *B* his betrothed Spouse, in conjunct Fee and Liferent, and the Heirs-male of the Marriage; which failing, the said *A* his Heirs-male whatsoever; which also failing, his Heirs or Assigns whatsoever, absolutely and irredeemably, in all and singular [*Copy out the Lands.*] and that by two several Infestments, *a me* and *de me*, in manner more fully expressed in the above said Contract; as the same Contract, bearing date, &c. and containing a Procuratory of Resignation, a Clause of Warranty, the Precept of Sasine hereafter rehearsed, and divers other Clauses and Provisions, at greater Length holds forth.

(a) *In a Case where the Investiture is given to an Heir or Assigny, this Clause of the Instrument, as was formerly observed, ought to be prolonged with an additional one, setting forth the Feoffee's particular Title. Thus, if Sasine is given to an Heir, carrying Right to the Precept by Service and Retour, you proceed in this manner: As also, holding in his Hands the Retour of a general Service of the said A, as Heir-male to his said deceased Father, bearing date, &c. and represented, That as the above said Disposition, [heritable Bond or Contract of Wadset,] and the Precept of Sasine therein contained, were thereby effectually established in his Person, he ought also to be invested with the Subject-matter thereof, in Terms of the Act of Parliament made in that behalf. And if it is granted to an Assigny, you proceed thus: As also, holding in his Hands an Assignment by the above B, in favour of the said A, his Heirs or Assigns, passing over to them the forementioned Disposition [or other Writing] and the Precept of Sasine therein contained; to the end that in virtue thereof, and of that his Assignment*

Which Disposition, including the Precept of Sasine above and under mentioned (*a*), the said *A* presented to *C*, Bailie in that Part by the afore-said Precept specially constitute, requiring him at the same time to set about and perform the Duties of his Office (*b*). In agreeableness to which Desire, he received the Disposition (*c*) into his Hands, and delivered the same to me the Notary, to be read and published to the Witnesses standing by; which accordingly I did, and have hereunto annexed the before mentioned Precept itself, which is as follows: [*Transcribe the Precept Word for Word*] (*d*). After reading and publishing the above mentioned Disposition, [*or other Writing,*] the said *C*, in consequence of the

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Office

to it, the said *A* might be forthwith vest and seised in the Fee of the Lands and others above denominated, according to the Direction of the Act of Parliament in that behalf; as the above said Assignment, dated, &c. doth likewise hold forth.

(*a*) Or, Which Contract [*or heritable Bond*] including, &c. And add, with the Assignment [*or Retour*] before rehearsed, if the Infesment is given to an Assigny, or an Heir generally served.

(*b*) But if the Disposer or Obligant gave Sasine propriis manibus, this Clause, representing the Delivery of the Warrant, is expressed thus: Which Disposition [*heritable Bond or Contract, &c.*] the said *A* presented to the above *B*, humbly desiring, That in conformity to it, he would enter him to the real Possession of the Subjects therein contained.

(*c*) and Retour [*or Assignment*]; or, he received the heritable Bond [*Contract of Wadset or Contract of Marriage*] into his Hands, &c.

(*d*) It is unnecessary to repeat the Precept in most Cases where the Granter gives Sasine with his own Hands.

Office thereby committed to him (a), gave and delivered to the said A (b) heritable State and Sasine, with Possession, corporal, actual and real, of all and singular the Lands, Tenements, Mills, Tithes, and others above enumerated (c); by delivering to him (d) a little Earth and Stone of the respective Lands and Tenements, the Claps and Hoppers of the Mills, and an Handful of growing Corn [or Stubble] in place of the Tithes (e), conform to the forementioned Disposition (f) in all Points: Whereupon the said A required Instruments concerning the whole Matter under

(a) If Possession was given by a Bailie. But say, the said B *propriis manibus*, if the Granter of the Precept performed the Formality himself.

(b) Or, to the said A, as Heir in general served and retoured to his deceased Father; or, — as having Right by Affignation, in manner above related; or, to the said A, for himself, and in name and behalf of his forenamed Spouse, according to Circumstances.

(c) Or, of all and whole the before mentioned Annualrent of —; and in case Annualrents should be altered, of such an Annuity as should correspond to the above said principal Sum of —, by the Laws of this Kingdom for the Time, to be uplifted at the Terms above specified by equal Portions, forth of the Lands, Baronies and others before denominated, or forth of any Part thereof, out of the readiest Rents, Revenues and annual Profits of the same.

(d) Or, by delivering to the said A [the Proctor] Attorney in his Name.

(e) Add, and a Penny Money over and above, if it is an Investment of Annualrent.

(f) Or, conform to the forementioned Contract, [or heritable Bond.] And if the Investiture was given to an Heir or Assigny, add, and general Service [or Assignation] above expressed.

der the Hand of me Notary-publick subscribing. These things were done on the Ground of the particular Lands, Mills and Tenements above mentioned, betwixt the Hours of Ten and Twelve in the Forenoon, upon the Day of the Month, in the Year of our LORD and of his Majesty's Reign, respectively before written, in Presence of E and F, Witnesses to the Premises specially called and required (a). [*Follows the Notary's Attestation, &c.*]

Though Infestments in burgal Tenements participate of the Nature of Resignations as much as of Sasines, yet since they are best known by the last Name, I chuse to give them a Place in this Section among Sasines.

Instrument of Sasine in Tenements within Burgh, containing some suitable Variations.

IN THE NAME OF GOD, AMEN. *Be it known to all Men, That on the ——— Day of ———, in the Year of our LORD One thousand seven hundred and thirty three, and of the Reign of our Sovereign George the Second the seventh*

(a) *Sasines propriis manibus, as was already taken notice of, use to be supported by the Giver's signing the Notary's Instrument, in presence of the instrumentary Witnesses; and in that case this last Clause ought to be enlarged with that which follows: Before whom the said B, in support of the Facts herein asserted, hath subscribed this Instrument on the Day of the Date hereof.*

seventh Year, *In Presence* of me Notary-publick, and the Witnesses subscribing, *Appeared A*, one of the Bailies of the Burgh of *E*, who passed with us, in the first Place, to that Tenement of Land which of old pertained to *B*, afterwards to *C*, and thereafter to *D*, lying on the South Side of the High Street of the same Burgh of *E*, and bounded [*as in the Disposition or other Writing* ;] and in the next Place, to [*such another Tenement*,] and at these respective Places, *E*, as Procurator for that Effect specially constitute by the said *D*, according to the Letter of Procuracy contained in a Disposition [*Wadset-right or heritable Bond*] by him in favour of *F*, his Heirs or Assigns, of Date, &c. (*a*), shewn and published upon the Ground of the particular Tenements, resigned, gave up, and by Staff and Baton, as the Custom is, surrendred, all and singular the Tenements of Land and others above mentioned, with the Pertinents (*b*) ; *In the Hands* of the said *A*, as of our Sovereign Lord the King, the above *D* his
imme-

(*a*) Or, and at these respective Places, the said *D*, *propriis manibus*, pursuant to a Disposition, &c. if Resignation was made by the Resigner himself.

(*b*) Or, — all and whole an Annualrent or yearly Duty of one thousand eight hundred Merks Scots Money, or such an Annuity as should be answerable to the principal Sum of twenty thousand Pounds Money foresaid, according to the Laws of this Kingdom for the Time, yearly to be uplifted at *Whitsunday* and *Martinmas* by equal Portions, forth of the Tenements of Land and others above mentioned, with the Pertinents, or forth of any Part thereof, out of the readiest Rents, Revenues and annual Profits of the same,

immediate Superior thereof; to the end that new Infestment of the same might be reassigned to the said *F*, his Heirs or Assignies, heritably and irredeemably, in due and competent Form (*a*). Accordingly this *A*, in consequence of his Office, and at the special Desire of the Resigner, gave and delivered to the said *F* heritable State and Sasine, with Possession, corporal, actual and real, of all and singular the Tenements of Land and others before denominated, with the Pertinents (*b*); by delivering to him (*c*) a little Earth and Stone of these respective Lands and Tenements (*d*), after the Form and Tenor of the before mentioned Disposition (*e*) in all Points: Concerning all which the same *F* required Instruments under the Hand of me Notary-publick subscribing. These things were done on the Ground of the specifick Tenements and Gardens above expressed, betwixt the Hours of, &c. [*forma communi.*]

An

(*a*) Or, heritably, and under Reversion in manner set forth in the Contract of Wadset [*or heritable Bond*] above rehearsed.

(*b*) Or, ——— of all and whole the aforementioned Annualrent of one thousand eight hundred Merks, or such an Annualrent as should correspond to the aforesaid principal Sum of twenty thousand Pounds, according to the Laws of this Kingdom for the Time, yearly to be uplifted at the Ternis above specified by equal Portions, forth of the Lands, Tenements and others above described, with the Pertinents, or of any Part thereof.

(*c*) Or, by delivering to *F*, Attorney in his Name.

(*d*) Add, and a Penny Money besides, if it is an Infestment of Annualrent.

(*e*) Contract of Wadset or heritable Bond. And when so, these Words, redeemable always, and under Reversion in manner above expressed, may be adjected to the Foot of the Clause.

An Heir generally served may be seised in Tenements within Burgh on production of his Predecessor's Infeftment; or one of the Bailiffs of the Burgh may seise the Heir, without a previous Service, after he hath taken Cognisance of his Proximity in Blood to the deceased Person by an Inquest of the Neighbourhood: And in either of these Cases, the following Formulary exemplifies the Safine.

Safine to an Heir cognosced, by Hasp and Staple.

— In Presence of me Notary-publick, and the Witneses subscribing, *Appeared A*, one of the Bailiffs of *E*; who, with *B* and us, went to that Tenement of Land which of old pertained to *C*, who transferred the same to *D*, from whom the deceased *E*, Father to the said *B*, afterwards acquired Right, lying, &c. [*Describe the Tenement by its Bounding.*] and there the said *A*, conformably to the Powers with which he is endowed in consequence of his Office, having in the first Place taken Cognisance and Trial of the Nearness in Blood to the said deceased *E*, did enter the above *B*, as Son and Heir to him (*a*), to the real, actual and corporal Possession of the Tenement of Land above denominated, with the Pertinents, by delivering to him the Hasp and Staple of the Door of that Tenement, according
to

(a) Or, as Son and Heir served and retoured to him, if the Proximity appeared by a general Service.

to the Custom of Burghs-Royal constantly observed in such like Cases (a) : And thereupon the said B required Instruments concerning the whole Matter, under the Hand of me Notary-publick subscribing. These things were done, &c.

When the Magistrates of a Burgh are charged by Letters of Horning to infest an Adjudger of burgal Tenements, they rarely ever disobey the
H h Charge,

(a) In a Case where the Heir makes over the Hereditament to a third Party before he is seised himself, the Cognition of his Propinquity in Blood to the Deceased, and the Purchaser's Investment, may be inserted in one and the same Sasine. For Instance, if we may suppose the Heir now cognosced to have formerly given the Tenement out of himself by Contract of Marriage, the Wife's Investiture, in that case, might be adjoined thus : Thereafter the said B, in implement of his Part of the Marriage-settlement betwixt him and C his Spouse, of Date, &c. resigned, gave up and surrendred the aforementioned Tenement, with its Pertinents, to the said A, as to our Sovereign Lord the King, the immediate Superior of it; to the end that new Investment of the same might be returned in the following manner, namely, the one half thereof, to the said B and his aforementioned Spouse, the longest Liver of them two in Liferent, and the Heirs of the Marriage, which failing, the said B his other Heirs or Assigns whatsoever, in Fee; and the other half thereof, to himself, his Heirs or Assigns whatsoever, heritably, in due and competent Form. Which Resignation so made, the said A accepted, by receiving the Symbols into his Hand; and forthwith gave and delivered to the above B, and C his Spouse, for their respective Rights and Interests, heritable and liferent State and Sasine, with Possession, &c. of all and whole the Tenement of Land above described, with the Pertinents, by delivering to the said B, for himself and in behalf of his Spouse, a little Earth and Stone of the Ground of the same, according to the above mentioned Settlement in all Points.

Charge, but give Safine forthwith. The Instrument is in this Form.

Safine by the Magistrates of a Burgh, upon a Charge to infest an Adjudger.

— In Presence of me Notary-publick, and the Witnesses subscribing, *Appeared A*, one of the Bailies of *E*, who passed with us to the Tenements of Land and others under mentioned, *And there*, in obedience to the Letters of Horning issued out and executed against the Magistrates of that Burgh at the Instance of *B*, pursuant to a Decree of Adjudication, of Date, &c. obtained by him before the Lords of Council and Session, in an Action against *C*, in payment of the extended Sum of —, and certain other Sums specified in the above said Decree: *And there*, I say, the said *A*, in obedience to the before mentioned Charge, gave and delivered to the above *B*, heritable State and Safine, with Possession, corporal, actual and real, of all and singular the Tenements of Land and others hereafter denominated, namely, [*Copy out the Tenements, &c. from the Decree.*] by delivering to *D*, Attorney in his Name, a little Earth and Stone of the respective Tenements, Office-houses and Gardens before described, after the Form and Tenor of the above mentioned Decree and Letters of Diligence in all Points: Whereupon the said *A* required Instruments, &c. These things were done, &c.

S E C T. II.

Of Resignations.

Resignations may be considered, either as Extinguishments of the Fee, or as necessary Concomitants in the Transmission of it. If we take them in the first View, they are by a peculiar Name called *Resignations ad remanentiam*; because the Property of the Fee, with which the Vassal was invested, is then resigned to the Superior *ad perpetuam remanentiam*: And if we consider them in the second, they are called *Resignations in favorem*; because the Fee is resigned to the Superior, not to remain with him, but to be returned to the Party in whose favour Resignation is made. Concerning the Requisites and Solemnities of Resignations of both Sorts, see *Stair, B. 2. tit. 11. § 1, — 4. and B. 3. tit. 2. § 8.*

Resignations *in favorem* being more common and ordinary than those *ad remanentiam*, I shall first exemplify them.

Instrument of Resignation in favorem.

IN THE NAME OF GOD, AMEN. KNOW all Men, *That* upon the — Day of —, in the Year of our LORD —, and of the Reign of our Sovereign George the Second the — Year; *In Presence* of A Chief Baron, and the rest of the Barons of his Majesty's Court of

Exchequer in Scotland, his Highness's Commissioners duly authorised for the Purpose after mentioned (a); And also, in Presence of me Notary-publick, and the Witnesses subscribing, *Appeared B*, as Procurator to the Effect under written specially constitute by *C*, conform to the Letter of Procuratory contained in an absolute and irredeemable Disposition of the Lands and others hereafter denominated, granted by the said *C* to *D*, of Date, &c. (b): And there the said *B*, with the outmost Humility, resigned, gave up, and

(a) *If the Sovereign is Superior; because in that case the Lands are resigned to the Barons of Exchequer. But say, in Presence of A, Superior of the Lands and others after mentioned, if they were resigned to a Subject-superior. And say, in Presence of A, Commissioner duly authorised by B, Superior of the Lands and others after mentioned, with Power to receive Resignations on his behalf, according to a Commission granted to him for that Effect, bearing date, &c. if the Resignation was made to one commissioned by him: For as Sasine may be given to the Vassal or his Attorney, so Resignation may be made to the Superior, or one authorised by him to receive it.*

(b) *Or, conform to the Letter of Procuratory contained in a Contract of Wadset betwixt him and D on the one and other Sides, of Date, &c. or, conform to the Letter of Procuratory contained in an heritable Bond granted by him to D, of Date, &c. And if the Resignation is in favour of a third Party, acquiring Right by a singular Title before Resignation was made by the Cedent, adjoin this Clause: Which is now assigned and made over to E, according to an Assignment thereof in his favour, bearing date, &c. Instead of which Clause, say, To which E, as Son and Heir served and retoured to the said D deceased, according to his retoured Service, bearing date, &c. hath now succeeded by Progress, if the Resignation is in favour of one carrying Right to the Procuratory by Service and Retour.*

and by Staff and Baton, as the Custom is, surrendered, all and singular, [*Copy out the Lands, &c. from the Conveyance*] (a); together with all Right and Title the said C, his Heirs or Successors, either had or could anywise challenge to the same, or to any Part thereof (b): *In the Hands* of the said A, for himself, and in behalf of the other Barons of the above said Court, his Majesty's Commissioners as was said, as in the Hands of the Sovereign himself, the said C his immediate Superior of the Lands and others before enumerated (c): To the end that new Infeſtment
of

(a) But if it is an Annualrent that was resigned, say, all and whole an Annualrent or yearly Duty of —, or such an Annualrent as should correspond and be answerable to the principal Sum of — by any supervenient Law for the Time, to be uplifted at two Terms in the Year, *Whitsunday* and *Martinmas*, by equal Portions, forth of the Lands and others hereafter designed, namely, [*Transcribe the Lands, &c. from the Bond.*] or forth of any Part or Portion thereof, out of the readiest Rents, Revenues and annual Incomes of the same.

(b) If the Resignation proceeded on the Procuratories contained in two or more separate Writings, breaking off from the first, you here begin with the second, saying, In the same manner, the said B, as Procurator for that Effect specially constitute by E, according to the Letter of Procuracy contained in a Disposition [*or other Writing*] granted by him in favour of the above D, of Date, &c. made due and lawful Resignation of all and singular [*such and such other Subjects,*] together with all Right, &c. & sic de ceteris.

(c) If the Subjects resigned are held of the Crown. But say, In the Hands of the said A, [*or, of the said A, as Commissioner specially constituted by the above B,*] the said C his immediate Superior of the Lands and others before enumerated, if they are held of a subaltern Superior.

of the same might be reassigned to the above *D*, his Heirs, &c. heritably and irredeemably, in due and competent Form (*a*): On condition always, &c. [*The Conditions, if there are any in the Warrant, are here reckoned up.*] Accordingly the said *A*, having accepted the Resignation by receiving the Symbols into his Hands, forthwith reassigned and passed over to the same *D* (*b*) the whole Lands, Baronies and others before described (*c*), to be possessed and enjoyed by him and his above named, heritably and irredeemably, in all Time coming (*d*); and that by returning the Symbols to the above *B*, who at the same time appeared as his Attorney in that behalf: And hereupon this *B* required Instruments concerning the whole Matter under the Hand of me Notary-publick subscribing. These things were done in the High Exchequer-house at *Edinburgh* (*e*), betwixt the Hours of, &c. [*forma communi.*]

As

(*a*) Or, heritably, and under Reversion in manner after mentioned, viz.

(*b*) Or, to the same *E*, as Heir in general served and retour'd to the said deceased *D* his Father; or, to the same *E*, as having Right by Affignation in manner above set forth.

(*c*) Or, the before mentioned Annualrent of —; and in case Annualrents should be altered, such an Annuity as should be answerable to the principal Sum of —, by any supervenient Law at the Time, to be uplifted at the Terms above specified by equal Portions, forth of the Lands, Baronies and others above denominated, or forth of any Part thereof, out of the readiest Rents, &c.

(*d*) Or, heritably, and under Reversion in manner above related.

(*e*) Though *Sasine* or *symbolical Possession* must be taken on the Ground

As to Resignations *ad remanentiam*: A simple Renunciation in favour of the Superior, without the Solemnity of a Resignation regularly performed, is not the proper Way to cancell a Right vested by Sasine in the Person of the Renouncer; nothing less, in that case, than an Instrument of Resignation *ad remanentiam* duly registred being sufficient to divest him: For the same Reason, therefore, that Instruments of Sasine must be registred within sixty Days after Date, so must Instruments of Resignation *ad remanentiam*; because it is the Registration in either Case that effectually completes the Alienation. These Resignations, when made to the Sovereign, are generally warranted by Procuratories *per se*; but when made to subaltern Superiors, they more ordinarily proceed on Procuratories *ad remanentiam* contained in Dispositions, or Discharges and Renunciations of redeemable Infeftments. The following Example is diversified with the *Formula* of a Resignation *propriis manibus*, as well as of that performed by a Proctor.

Instrument of Resignation ad remanentiam.

IN THE NAME OF GOD, AMEN, &c. In Presence, &c. Appeared B, one of the ordinary Macers before the above said Court; who,
as

Ground of the particular Tenements passed over, Resignation may be made at any Place where the Superior or his Commissioner can be conveniently met with; so that this Clause of the Instrument admits of occasional Changes upon that account.

as Procurator for that Effect specially constitute by C, according to a Procuratory of Resignation *ad remanentiam* granted by him to our forenamed Sovereign, of Date, &c. (a), resigned, gave up, and by Staff and Baton, with such Reverence and Humility as became him, surrendered, all and singular [*Transcribe the Subjects from the Procuratory or other Writing on which the Resignation proceeded.*] together with all Right, &c. In the Hands of the said A, for himself and in behalf of the other Barons of the aforementioned Court of Exchequer, his Majesty's Commissioners as was said, as in the Hands of the Sovereign himself, *ad perpetuam remanentiam*: To the effect the Right of Property of the above mentioned Subjects, then standing in the Person of the said C, being consolidated in the Person of his Highness with his own Right of Superiority thereof, the *plenum dominium* of the whole Lands, Baronies and others above resigned, might thence forward remain and abide with him and his Royal Successors, heritably and irredeemably, in all Time coming (b).
Ac-

(a) Or, Appeared B, who *propriis manibus*, pursuant to a Disposition [or Discharge and Renunciation] of the Subjects after specified, granted by him to the said A, of Date, &c. if the Resignation is made to a Subject-superior, and is performed by the Resigner *propriis manibus*: For as *Sasine* may be given by the Superior with his own Hand, so Resignation may be made by the Vassal in the same manner.

(b) But if the Lands or other Subjects were resigned to a subaltern Superior, say, In the Hands and in favour of the said A, his Heirs, &c. *ad perpetuam remanentiam*: To the end the Re-

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Accordingly the said *A*, having received the Symbols into his Hands, accepted the Resignation to the End and Effect particularly above mentioned: And hereupon he required Instruments, &c. These things were done, &c. (*a*).

S E C T. III.

Of Premonition and Consignation.

HAVING treated in the foregoing Section of the Extinguishment of Rights by Resignations *ad remanentiam*, Occasion now offers to explain how they are voided by Orders of Redemption: But it may seem proper, before I enter upon this Subject, to unfold a little the Nature of Reversions, or Powers of Redemption, as the Base on which the whole Order is founded.

A Reversion then, or Power of Redemption, is, *A Faculty of recovering a Right, which the Reverser, or Party to whom the Redemption belongs, had given out of himself by a voluntary Alienation, or which had been awarded from him by the Diligence*

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Refigner's Right of Property, being consolidated in the Person of this *A*, with his own Right of Superiority, the whole Lands and others above rehearsed might from thenceforth remain and abide with him and his above named, and be possessed and enjoyed by them, absolutely and irredeemably in all time coming.

(*a*) *Instruments of Resignation ad remanentiam, when performed propriis manibus, must be signed by the Party resigning, as well as the Notary; in which case, this last Clause ought to be enlarged with such another as that mentioned in the Close of the first and second Sasines.*

gence of Creditors in payment of his Debts. This is called a *legal*, and that a *conventional* Reversion; the one having its Origin in Law, and the other being founded upon the Agreement of Parties.

Reversions are voided, or rendred effectual, the same Way in which they are constituted; that is, by Consent, or by Law: By Consent, as when the Reversion is discharged, and the redeemable Infeftment converted into an absolute and irredeemable one; or when the Party that owes the Reversion, on Receipt of the Redemption-money, renounceth it voluntarily, without Compulsion: By Law, as when an Order of Redemption is carried on by the Reverser, and a Declarator of the same given out by the Judges.

This Order of Redemption, in conventional Reversions, must be gone about in the precise Terms of the Reversion itself, and ought to be regulated by it in the minutest Circumstance; inasmuch as if the smallest Article is not closely observed, the Redemption is plied for in vain. Thus, if it is stipulated, that Premonition must be made to the Creditor forty Days preceeding the Term at which the Order is intended to be used, so many Days must intervene betwixt the Date of the Premonition and that of the Consignation, without bringing the former of these two into the Computation; because the want of one Day is sufficient to cast the Redemption. But in legal Reversions, one should first distinguish, whether the Adjudger hath intromitted with the Rents of the Lands

Lands within the Legal or not : For if he has, there is no need of an Order of Redemption, since Action of Count and Reckoning is sustained upon Consignation without it ; but where the Adjudger hath had no Intromission, or in a Case where he could have no Super-intromission, as in special Adjudications, the Redemption on the legal Reversion proceeds in the same Way with that on the conventional, to wit, by leading on an Order of Redemption, and following out an Action of Declarator of it. The first Step, therefore, in the Order, is that of Premonition ; which is, *An Act of the Reverser of a redeemable Right, or of one authorised by his special Mandate, forewarning the heritable Possessor at the time, though a singular Successor, to appear and receive the Redemption-money, at the Time and Place mentioned in the Reversion.* But in the Redemption of Adjudications, as there is no determinate Time or Place assigned by Law for using the Order, the Adjudger may be premonished to receive his Money, upon any Number of Days before-hand the Redeemer hath a mind, even though it were on that very Day the Advertisement is given : The Place of Redemption, nevertheless, whether the Adjudger's own Dwelling, the Ground of the Lands, or the Church of the Parish in which they ly, (the most proper Places of Redemption in this Case,) must be particularly condescended on.

When the Reverser is so taken up that he cannot go about the Redemption himself, he gives

a Procuratory to one to perform the Solemnity for him; the Form of which Procuratory is as follows.

Procuratory of Premonition and Consignation.

K NOW ALL MEN, *That* I *A*, heritable Proprietor of the Lands and others under mentioned (*a*), have made and constituted, as I, at this present, make, constitute and ordain, *B* and *C*, and each of them, jointly or severally, my very lawful and irrevocable Procurators, for me, and in my Name, to pass, and, in Presence of a Notary and Witnesses, premonish *D*, and his Tutors and Curators for their Interests, personally or at their Dwelling-places, to attend upon *Whitsunday* next, betwixt Mid-day and Sun-set, at [*Mention the Place of Redemption.*] there to receive from me, on Delivery of an authentick Renunciation and Grant of Redemption of the Subjects under written, namely, all and singular these my Lands of [*Name the Lands.*] disposed and passed over to the deceased *E*, Father to the said *D*, by a Contract of Wadset betwixt him and me on the one and other Sides, bearing date, &c. by which Contract it is provided, That these Lands shall
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(a) If the Reverser is Minor, the Concurrence of his Curators is necessary to authorise the Deed; and if he is under the Years of Pupillarity, the Tutors must act in his Name: So that one should observe the Variations occasioned by either of these Circumstances as they occur; which are so minute, by the by, that they only need to be hinted at.

be redeemable by me, upon Payment, &c. in Manner and upon the Premonition therein expressed (a) : There, I say, to receive from me, or from my Procurators in my Name, the above said principal Sum of ———, with the other Sums specified in the Clause of Reversion before rehearsed (b) ; and, in a Word, to hear and see that I am ready to fulfil the several Articles I stand bound to perform before I can claim the Redemption. *Further*, I hereby empower my forenamed Proctors, jointly and severally, as was said, to appear at the Time and Place before
written,

(a) *But if the Subject to be redeemed is an Infestment of Annualrent, say*, There to receive from me, upon granting an ample Discharge and Renunciation of the Subject under written, namely, all and whole an Annualrent of ———, or such an Annualrent as shall be answerable to the principal Sum of ——— by the Laws of this Kingdom for the Time, upliftable yearly forth of these my Lands of ——— with the Pertinents, conform to an heritable Bond, of Date, &c. granted by me to the said D concerning the forementioned Annuity; by which Bond it is declared, That the same Annuity shall be redeemable by me, my Heirs or Assignies, on payment, &c. in Manner and upon the Premonition therein expressed. *And if it is an Infestment on an Adjudication, say*, ——— namely, all and singular these my Lands of, &c. awarded to the said D by a Decree and Sentence of Adjudication, pronounced by the Lords of Council and Session, upon the ——— Day of, &c. in payment to him of the extended Sum of ———, and certain other Sums mentioned in the afore-said Decree.

(b) *Or*, ——— with the other Sums accruing due by the Decree of Adjudication above rehearsed, an Account of which Sums you are hereby enjoined to require from the said D, that the same, in case of his Absence, may be consigned for his behoof in manner afterwards related.

written, and to offer or deliver to the above *D* the aforesaid Sums, upon his granting the Renunciation already mentioned; and in case of his Absence, or Refusal to receive these Sums, to grant the Renunciation, or give up the Contract of Wadset [*or other Writing*] above recited, with the Charter and Safine ensuing upon it, To consign the Money, in either of these Cases, in the Hands of [*Name the Consignatary.*] and to protest, that the particular Subjects before rehearsed may from thenceforth be holden as duly redeemed from him, his Heirs and Successors, in Terms of the Clause of Reversion already related in all Points (*a*): And thereupon to take Instruments, and do every thing else in relation to the Affair here mentioned, that to the Office of a Proctor, in such Cases, is known to appertain, or that I might do my self if I were present. [*Registration for Preservation.*]

The Creditor being premonished to receive his Money and renounce his Claim at a certain Time and Place assigned him, the Premonition must appear by an Instrument of the Notary who was present at the Formality; and this Instrument is so material in bringing about the Redemption, and hath such a necessary Connexion with the rest of the Order, that no other Writing or Admicle whatever can supply the want of it. The
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(*a*) Or, ——— in Terms of the Act of Parliament, concerning the Redemption of Adjudications, in all Points.

Stile of one, therefore, is here subjoined, as follows.

Instrument of Premonition.

A T —, the — Day of —, in the Year of our LORD One thousand seven hundred and thirty three, and of his Majesty's Reign the seventh Year, *In Presence* of me Notary-publick and the Witnesses subscribing, *Appeared A*, who, pursuant to a Procuratory granted to him by B, of Date, &c. went with us, in Presence of D (a), where, after reading and publishing the above said Procuratory, and also the Contract of Wadset after mentioned (b), he premonished and forewarned the said D to await on *Whitsunday* next, betwixt Mid-day and Sun-set, at [the Place assigned for using the Redemption,] there to receive from the above B [as in the foregoing Procuratory, mutatis

(a) But if the Party to whom Premonition is made cannot be found personally, he useth to be cited at the Place of his Abode; and the Domicil, in that case, ought to be particularly pointed out, in this manner: — went with us to the Dwelling-house of D, in the Town [or Parish] of E, at which Place he and his Family presently reside. And if he is not in Scotland, or has no fixed Place of Residence, the Order of Redemption proceeds upon Letters of Premonition under the Signet, issued out by Authority of the Lords of Session; and the Party, in this case, must be cited at the Market cross of Edinburgh, and at the Pier and Shore of Leith, as shall be shewn hereafter.

(b) Or, and also an Extract of the Adjudication after mentioned; or, and also an Extract of the Sasine ensuing on the heritable Bond after mentioned, which is declared by the Bond itself to be a sufficient Reversion for using the Order of Redemption under written, according to Circumstances.

mutatis mutandis, downward to the following Clause,] and, in a Word, to hear and see that he is ready to fulfil the several Articles he stands bound to perform before he can claim the Redemption: In the same manner, the said *A* advertised the above *D* to bring with him at the Time and Place before written, the Contract of Wadset [*or other Writing*] above rehearsed, and the Infestments ensuing upon it, with an authentick Renunciation and Grant of Redemption of the same, in favour of his forenamed Constituent, the Reverser, his Heirs and Successors; and certified, that in case of his Absence, or Refusal to receive the aforesaid Sums, to grant the Renunciation, or to give up the Investiture already mentioned, the said *B*, in either of these Cases, would consign the Money in the Hands of, &c. and protest that the particular Subjects before mentioned should thence forward be holden as duly redeemed from the above *D*, his Heirs and Successors, in Terms of the Clause of Reversion already recited in all Points (*a*): And hereupon the said *A* required Instruments, &c. These things were done, &c. [*Mention the Place where Premonition was made.*] betwixt the Hours of, &c. in Presence of *E* and *F*, Witnesses to the Premises specially called and required (*b*).

N. B.

(*a*) Or, in Terms of the Act of Parliament concerning the Redemption of Adjudications, in all Points.

(*b*) When Premonition is made to one at the Place of his Habitation, it is customary to affix a Schedule or short Draught of
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N. B. Besides the Subscription of the Notary and Witnesses, the ultimate requisite of these and all other Instruments of less Moment, is, the Notary's Docquet, affirming the Truth of the Facts represented in the Instrument. This Docquet is not made up of a Number of fixed and unalterable Words, like the Attestation subjoined to Instruments of higher Importance; but is such as the Notary assumes for himself on his Admission to the Office: As, *Quod vidi, assero; Quæ attestor; Præmissa esse vera, ego A, Notarius publicus requisitus, attestor*, and the like.

Premonition to one under Age must not only be made to the Ward or Minor himself, but to his Tutors and Curators, either personally, or by Letters of Supplement at the Market-cross of the head Burgh of the Jurisdiction where the Minor resides. The following Instance is framed in a Case of that kind.

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Instrument

the Instrument to the most patent Gate of the Dwelling; and the Notary, in such a Case, ought to adject a Clause to the Foot of the Instrument, averring the Order to have been performed in that manner. The Clause I speak of might be mentioned thus: But in regard the said D was abroad, and could not be found personally, I the Notary, therefore, affixed to the most patent Door of his Dwelling-house above described, an authentick Copy of this Instrument, subscribed by me and the forenamed Witnesses at the Time of the Date hereof.

Instrument of Premonition after another Form.

—— In Presence of me Notary-publick and the Witnesſes after named, *Appeared A*, Procurator to the Effect under written duly authoriſed by *B*, Tutor-teſtamentary to *C*, according to a Procuratory granted to him, of Date, &c. and paſſed with us, in Preſence of *D*, one of the two Heirs-portioners ſerved and retoured to the deceased *E*, and likewise in Preſence of *F*, Daughter and Heir-apparent to the deceased *G*, the other Siſter and Heir-portioner of the ſaid deceased *E*; where, after reading and publiſhing the above mentioned Procuratory, and alſo the Contract of Wadſet after ſpecified, he premoniſhed them to attend upon *Whitſunday* next, betwixt Mid-day and Sun-ſet, within the New Seſſion-houſe of *Edinburgh*, at that Place where the Commiſſaries uſe to ſit in Judgment, there to receive from the above *B*, as Tutor to the ſaid *C*, or from his Proctor in his Name, the Sum of ——, for the Redemption of the Lands of —— ——, diſponed and paſſed over to the ſaid *E* heritably, under Reverſion notwithstanding in manner mentioned in a Contract of Wadſet betwixt him and *H* on the one and other Sides, of Date, &c. to which Reverſion the ſaid *C* hath ſucceeded by Progreſs, as his Title is more fully ſet forth in the Procuratory of Premonition above expreſſed. He likewise advertiſed them, that the ſaid *B*, in behalf of his Pupil, was ready

dy to fulfil all the other Articles the Reverfer stands bound to perform by the aforementioned Contract, upon condition they gave in at the time of Redemption, this Contract itself, the Charter and Safine enfuing upon it, and an ample Renunciation and Grant of Redemption, in favour of the faid *C*, his Heirs or Assignies, of the whole Lands, Baronies and others, therein and before rehearsed; and certified, that in case of their Failure so to do, the faid *B* would consign the Moneey for their Behoof, and protest that his Pupil might from thenceforth have full and free Ingress and Access to the absolute and unlimited Possession of the above faid Estate, in Terms of the Clause of Reversion already mentioned in all Points. In the same manner, this *A*, as Messenger and Sheriff in that Part, specially constitute by his Majesty's Letters of Supplement under the Signet, bearing date, &c. went with me and the Witnesses to the Market-cross of —, the head Burgh of the Sherifffdom of —, within which the faid *D* and *F* constantly reside, and there, after he had read and proclaimed the aforesaid Contract and Letters of Supplement, and had called out *Oyes* three several Times, he made Premonition to — — —, Curators to the aforesaid Wadsetters, and to all others their Tutors or Curators, for their Interests, To appear at the Time and Place above written, to the End and under the Certification particularly above mentioned; leaving a just and authentick Copy of the Letters of Supplement affixed to the

aforesaid Market-crofs after he had fo done : Concerning which, as well as the feveral other Particulars herein afferted, he required Instruments, &c. Thefe things were done betwixt the Hours of — and — in the Afternoon, upon the Day of the Month, in the Year of our LORD, and of his Majefty's Reign, refpectively before fpecified ; before thefe Witneffes, *viz.* to the Premonition of the faid *D* and *F* personally, *A* and *B*, and to that of their Tutors and Curators at the Market-crofs of —, *C* and *D*.

It was formerly faid, that if the Perfon to whom Premonition is made hath gone out of the Kingdom, or if he have no fixed Place of Refidence, the Order of Redemption proceeds upon Letters of Premonition under the Signet, iffued out by Authority of the Lords of Seffion ; and that the Party, in this Cafe, muft be cited at the Market-crofs of *Edinburgh*, and Pier and Shore of *Leith*.

Instrument of Premonition, in a Cafe where the Party premonifhed is not in the Kingdom.

— Appeared *A*, Meflenger and Sheriff, to the Effect under written, fpecially conftitute by the Sovereign's Letters of Premonition iffued out at the Instance of *B*, Son and Heir ferved and re-toured to the deceased *C*, and went with us to the Market-crofs of *Edinburgh*, and likewise to the Pier and Shore of *Leith*, at which refpective
Places,

Places, after he had proclaimed three several *Oyezses*, he published the above said Letters, and in his Majesty's Name and Authority premonished *D*, presently out of the Kingdom, to attend upon the — Day of — next to come, within the New Church of *Edinburgh*, at that Place where the General Assembly have their annual Meetings, there to receive from the said *B*, or from his Procurator in his Name, the accumulated Sum of —, and the other Sums specified in a Decree of Adjudication, pronounced in his favour by the Lords of Session in a Pursuit against the said deceased *C*, and that for Redemption of the Lands of — and the other Subjects, with the Pertinents, mentioned in the aforesaid Decree. *Moreover*, he forewarned the said *D* to bring with him, at the Time and Place above mentioned, this Decree itself, the Grounds and Warrants upon which it proceeded, and the Charter, Sasine, Decrees of Removing and Mails and Duties, ensuing upon it, with an ample Discharge and Renunciation of the whole, in favour of the above *B*, his Heirs or Assignies; and certified, that in case of his Failure in either of these Respects, the same *B* would consign the Money upon the Adjudger's Peril, and protest that the Lands and others before mentioned might from that time forward be holden as duly redeemed from him, according to the Direction of the Act of Parliament in that behalf. These things done, the said *A*, affixing an authentick Copy of the Letters of Premonition to the Market-

ket-cross of *Edinburgh*, and another to the Pier and Shore of *Leith*, required Instruments, &c. This Solemnity was performed at the respective Places of Premonition already mentioned, betwixt the Hours of, &c. in Presence, &c.

The limited Day of Redemption being come, the Reverser, or his Attorney, goes with a Notary and Witnesses to the Place condescended upon, where they attend from Mid-day to Sunset; and if the Party premonished does not appear, or, appearing, refuseth to accept the Redemption-money, and to renounce and give up his Claim, after publishing the Right of Reversion and Instrument of Premonition, and numerating a Part of the Sums, they consign the Money in the Hands of the Person nominated for that End, for whose Sufficiency the Consigner is nowise answerable; but if no Consignatory is named, the Money may be consigned in the Hands of the Clerk of the Bills, on the Peril of him that owes the Reversion, or in the Hands of any other Person, on the Peril of him to whom the Reversion belongs; and the Consignation in either Case exempts the Redeemer from being liable for the Interest of the Sums consigned: But then he would do well to get the Consignation avouched by a Writing under the Consignatory's own Hand; because the Instrument of a Notary, tho' *actus officii*, is not sufficient to prove the Receipt of the Money against him.

The Consignation must not only appear under
Form

Form of Instrument, as well as the Premonition, but the Instrument must be very full and ample, mentioning the Deed upon which the Redemption is grounded, and recapitulating the several Steps of the Order prior to that of the Consignation itself, with which the Instrument concludes. As for Example :

Instrument of Redemption and Consignation.

——— Appeared *A*, Attorney to the Effect after specified specially constitute, according to a Procuratory granted to him by *B*, of Date, &c. and went with us to the New Session-house of *Edinburgh*, to that Part of it where the Commissaries use to sit in Judgment, and there, after reading and publishing a Contract of Wadset, dated, &c. by which the said *B* disposed and made over to the deceased *C*, his Heirs and Successors, all and singular these his Land of [*Mention the Lands.*] heritably, under Reversion nevertheless, on payment, &c. in Manner and upon the Premonition specified in the above said Contract (*a*) : *And in like*

(*a*) Or, after reading and publishing an Extract of the Instrument of Sasine, ensuing upon an heritable Bond, dated ———, by which Bond the said *B* became bound to vest and seise the deceased *C*, his Heirs and Successors, in an Annualrent of ———, or such an Annualrent as should be answerable to the principal Sum of ———, by any supervenient Law at the Time, to be uplifted forth of the Lands of ——— ———, and others mentioned in the above said Bond ; whereby it is appointed and stipulated, That the same

like manner, after reading and publishing the before mentioned Procuratory, authorising the said *A* to make the Premonition, and perform the rest of the Order under written, in manner afterwards related : *Again*, after reading and publishing an Instrument of Premonition under the Hand of *D* Notary-publick, setting forth, That the said *A*, in agreeableness to the same Procuratory, had, on the ——— Day of ——— last past, forewarned and premonished *E*, Heir-apparent to the said deceased *C*, and his Tutors and Curators for their Interests, to attend at the Time of the Date hereof, in the New Session-house of *Edinburgh*, at that Part of it already mentioned, there to receive from the above *B*, or from his Procurator in his Name, the aforesaid principal Sum of ———, with the other Sums accruing due to him by the Clause of Reversion [*or Decree of Adjudication*] before rehearsed, and to hear and see that the said *B* was ready to fulfil all the other Articles the

same Annualrent shall be redeemable and under Reversion, on payment, &c. in Manner and upon the Premonition therein expressed; and that a Copy of the Bond, or an Extract of the Sasine to follow upon it, shall serve as a sufficient Reversion for using the Order of Redemption under written, notwithstanding any Law or Statute to the contrary. Or, after reading and publishing an Extract of a Decree of Adjudication, given out by the Lords of Session upon the ——— Day of ———, in favour of the deceased *C*, pursuant to a Suit commenced at his Instance against the above *B*, from whom the Lands of ——— and others therein specified are awarded, and appropriated to the said *C*, his Heirs and Successors, in payment of the extended Sum of ———, and certain other Sums mentioned in the above said Decree.

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the Reverser is bound to perform before he can claim the Redemption; and also setting forth, That he had advertised the said *E*, and his Tutors and Curators, as was said, to bring with them, at the Time and Place above written, the aforesaid Contract [*or other Writing*] itself, the Charter and Sasine ensuing upon it, and an ample Renunciation and Grant of Redemption of the Infeftment, in favour of the said *B*, his Heirs or Assignies, and that he certified them, in case of their Absence, or Refusal to receive the aforesaid Sums, to grant the Renunciation, or give up the Investiture before mentioned, he would, in either of these Cases, consign the Money for their behoof, and protest that the Lands [*or Annualrent*] and others above recited, might thence forward be holden as duly redeemed from the said *E*, in Terms of the Clause of Reversion before related, in all Points (*a*): And there, I say, after reading and publishing the before mentioned Writings, the said *A*, pursuant to the above said Procuratory, numerated the Money due to the said *E*, and offered to deliver the same to him, on Receipt of the forementioned Investiture, and of an ample Renunciation and Grant of Redemption of the Infeftment, in favour of the above *B*, his Employer: But in regard the said *E* only shewed he was ready to receive the Money, and to deliver up the Investiture, without giving in a Renunciation,

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(*a*) Or, in Terms of the Act of Parliament concerning the Redemption of Adjudications, in all Points.

nunciation, and Grant of Redemption of the Infestment, at least a formal and regular one, containing a Procuratory of Resignation, and the other necessary and accustomed Clauses (*a*); and besides, that he was not in a Condition to repossess the Reverser, nor to renounce and reconvey the Infestment, as being only Heir apparent, and not served and retoured, to the deceased *E*, his Predecessor; the said *A* therefore, having awaited at the Place of Redemption till Sun-set, did then, according to the Directions of the above mentioned Procuratory, consign in the Hands of [*Name the Consignatory.*] the aforesaid principal Sum of —, and the Annualrents thereof resting at this Day's Date (*b*); and protested, that the Lands and others above written (*c*), might from that time forward be holden as
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(*a*) Or, But in regard the said *E*, nor no Person in his Name, appeared in that behalf, though he and his Curators were three Times loudly called on, at the most patent Door of the Place of Redemption above denominated, *if the Party premonished did not appear at all.*

(*b*) Add, with the Sum of — besides, to the end that out of this last Sum, the said *E* might be repaid of the Expence of his Predecessor's Infestment, and of the Entry or Composition to the Superiors, according as his Account of both shall be ascertained by Modification of the Lords of Session, in the Process of Declarator after mentioned, *if the Money is due by an Infestment on an Adjudication; because in that case the Order of Redemption is not used with Effect, unless the Debtor consigns the Expence in leading on and perfecting the Diligence, as well as the principal Sum and Annualrents.*

(*c*) Or, that the Annualrent or yearly Duty above written, and the Lands and others out of which it is upliftable, *if it is an Infestment of Annualrent that is sought to be redeemed.*

duly redeemed from the said *E*, his Heirs and Successors, in Terms, &c. and that the above *B*, his Constituent, might have full and free Ingress and Access to the absolute and unlimited Possession of these Lands, and the said *E* and his above named, not only utterly secluded from them, but made liable in the Expence of the Process of Declarator, to be commenced for establishing the Redemption herein mentioned, and in all Cost and Damage the said *B* may happen to sustain on account of the Consignation. Hereupon the said *A* required Instruments, &c. These things were done at the particular Place of Redemption already specified, betwixt the Hours of Twelve in in the Forenoon and Nine in the Evening, in Presence, &c.

The Redemption being thus far followed out, the next and ultimate Step in the Order is, an Action of Declarator, craving the Redemption may be found orderly proceeded in, and that the Defender may be decerned to renounce and reconvey the Infeftment, and to remove from the Lands, that the Pursuer may enter to them : But where the Order of Redemption is used against the apparent Heir of him that owed the Reversion, the Heir cannot be decerned to denude and reconvey, if he was not first charged to enter ; because he must be Heir served and infeft, before he can do so. However, the Declarator itself, having the Effect of a voluntary Redemption, is sufficient to extinguish the Right with respect e-

ven to singular Successors : Though a Resignation *ad remanentiam* would indeed be the proper Way to reinvest the Reverser, if the redeemable Infestment was held of himself; as an Infestment *de novo* would be, if it was held of his Superior.

S E C T. IV.

Of Requisition and Attendance.

WHen the Time prefixed for Payment of the Redemption-money is governed by the Requisition to the Reverser to pay it in, if the Creditor desires to have his Money repaid rather than retain the Security given him for it, he must give notice of his Intention in manner prescribed by the Clause of Requisition before he can effectuate his Purpose; and if the Debtor withstands the Advertisement, by withholding the Money after Intelligence is so given him, the Creditor may either adjudge the Right of Reversion from him, or second the Requisition with any other Diligence he hath a mind.

This Requisition must be gone about with the same Solemnity that is used in the Premonition; and when performed by a Mandatary, it must be warranted by such a special Procuratory as that which follows.

Procuratory

Procuratory of Requisition and Attendance.

BE IT KNOWN to all Men, *That I A, Inasmuch* as B, by a Contract of Wadset betwixt him and me on the one and other Sides, of Date, &c. sold and impignorated to me, my Heirs or Assignies, in security of the Sum of — then advanced and paid in to him, all and singular the Lands of —, and others mentioned in the aforesaid Contract (*a*); and engaged himself, at whatever Time I should desire rather to have my Money repaid than retain the Security given for it; forthwith to make payment of the above said Sum of —, with the bygone Annualrents of that Sum, and the termly Penalties incurred through the untimely Payment of these Annualrents, under the penal Sum of — in case of Failure; provided only Requisition was made to him forty Days preceeding the Time at which I intended to have the Money called for: *And inasmuch as*, being indeed desirous to have my Money repaid rather than retain the Security here mentioned, I have proposed to make the Requisition

(*a*) Or, *Inasmuch as* B, by an heritable Bond, bearing date, &c. became bound, in security of the Sum of — which I then paid in to him, to vest and seise me, my Heirs or Assignies, in an Annualrent or yearly Duty of —, and in case Annualrents should be altered, in such an Annualrent as shall correspond and be answerable to the first mentioned Sum, by the Laws of this Kingdom at the Time, to be uplifted forth of the Lands of — and others mentioned in the aforesaid Bond.

sition under written : *Have* therefore made and constituted, and at this present make, constitute and ordain, *C* and *D*, and each of them, jointly or severally, my very lawful and irrevocable Procurators, for me and in my Name, to pass, and, in Presence of a Notary and Witnesses, advertise and require the said *B*, personally or at his Dwelling-house, to attend upon *Whitsunday* next, betwixt Mid-day and Sun-set, within *St. Giles's Church* in *Edinburgh*, at that Place where the Monument of the deceased *James Earl of Morray* is erected (*a*), there to make payment to me, or to my Attorney in my Name, of the before mentioned principal Sum of —, with the by-gone Annualrents of that Sum, and the termly Penalties incurred through the untimely Payment of them ; and on Delivery of the Money, to get up the Contract of Wadset [*or heritable Bond*] above rehearsed, the Charter and Sasine ensuing upon it, and an ample Renunciation and Grant of Redemption of the Infeftment, in favour of him, his Heirs and Successors, to be kept and used by them as their own proper Evidences in time coming. *In the same manner*, I hereby empower my forenamed Procurators, jointly and severally

(*a*) But if there is no particular Place condescended on in the Clause of Requisition, for Delivery of the Redemption-money, say, to attend upon *Whitsunday* next, betwixt Mid-day and Sun-set, at that individual Place where Requisition is made to him ; because the Reverser, in this case, must be warned to pay it in where Requisition is made : For which Reason one should always make choice of a fit Place in giving the Advertisement.

verally as was said, to appear in my behalf at the Time and Place above mentioned, to receive from the said *B* the particular Sums accruing due to me by the heritable Security before specified, and on Receipt of these Sums, to deliver up the Writings of my Investiture, with an authentick Renunciation and Grant of Redemption of the Infestment; but in case of his Absence, or Refusal to pay in the Money, to protest that he hath incurred the penal Sum of —, mentioned in the Clause of Requisition before recited, and that he may be liable in payment of the same accordingly; and also, to protest that the Diligence, personal or real, seconding the Requisition, may in nowise weaken or invalidate the heritable Security before written, but that the same Security, nevertheless, may continue in its utmost Effect till the whole Sums above specified are thoroughly satisfied: And hereupon to take Instruments, and do every thing else in relation to the Premises, that I might do my self if I were present. [*Registration ad futuram rei memoriam, &c.*]

The Reverser being accordingly advertised of his Creditor's Intention, the Instrument setting forth the Intelligence must make special mention of the Procuratory warranting the Requisition, under the Pain of Nullity; and this is particularly to be regarded, because it is the Validity or Informality of the Requisition that renders the Sum moveable, or continues it heritable with respect to the Creditor, and that determines

mines whether the Succession to the Subject is carried to his Executors, or remains with his Heirs. Thence it is that this Formality is required in a Requisition, which in a Premonition is not so necessary. The Caution I am here insinuating, is observed in the following Instance.

Instrument of Requisition.

Edinburgh, the first Day of August, in the Year of our LORD One thousand seven hundred and thirty three, and of his Majesty's Reign the seventh Year.

WHICH DAY, In Presence of me Notary-publick and the Witnesses after named, *Appeared A*, who, in pursuance of a Procuratory granted to him by *B*, of Date, &c. went with us, in Presence of *C (a)*, and there, after reading and publishing the above said Procuratory, and also the Contract of Wadset [*or heritable Bond*] after mentioned, he forewarned and required the said *C (b)*, to attend upon the ——— Day of ———

(a) Or, went with us to the Dwelling-house of *C*, in the Town of *E*, where he and his Family presently reside, if the Reverser was admonished at the Place of his Abode.

(b) The Reverser being minor, Requisition, as well as Premonition, must also be made to his Tutors and Curators, personally, or by Letters of Supplement at the Market-cross of the head Burgh of the Jurisdiction where the Minor resides; and if the Reverser hath no certain Domicil, or if he is a Subject residing abroad, he must be cited upon Letters of Requisition under the
Signet,

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—— next to come, betwixt Mid-day and Sun-
set, at [*Describe the Place particularly.*] there to
make payment to the said *B*, or to his Attorney
in his Name, of the principal Sum of —— (*a*),
in Terms of the Clause of Requisition, mention-
ed in the Contract of Wadset [*or heritable Bond*]
recited in the Procuratory above rehearsed; and
on Delivery of the Money, to get up the Con-
tract [*or Bond*] itself, the Charter and Sasine
ensuing upon it, and an ample Renunciation
and Grant of Redemption of the Infeftment,
to be kept and used by him and his Successors
as their own proper Evidence in time coming.
Moreover, he certified the said *C*, that in case of
his Absence, or Refusal to pay in the Money,
the above *B* would protest, that he had incurred
the penal Sum of ——, mentioned in the Clause
of Requisition before expressed, and that he might
be liable in payment of the same accordingly.
And hereupon the said *A* required an authentick
Instrument concerning the whole Matter, under
the Hand of me Notary-publick subscribing.
These things were done, &c. [*in forma communi.*]

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*Signet, at the Market-cross of Edinburgh, and Pier and Shore of
Leith: In both which Cases, the Instrument of Requisition bears
such a near Semblance and Affinity to that of Premonition in
a like Case, that it would be nothing less than an Affront offer-
ed to the Judgment of the Reader to give an Instance of it.*

(*a*) *Add, with the bygone Annualrents of that Sum, and
the termly Penalties hitherto incurred through the untimely
Payment of them, if the Money is secured by an improper Wad-
set, or an Infeftment of Annualrent.*

The precise Time prefixed by the Requisition drawing nigh, it is the Creditor's Business to attend at the Place appointed, to shew he is ready to renounce his Claim and give up the Investiture, upon Receipt of the Redemption-money; and if the Reverser absents himself, or, being present, refuseth to pay the Money, the Creditor or his Proxy, after reading the Instrument and Clause of Requisition, protests under Form of Instrument for the Penalty stipulated in the Contract. This Instrument is called,

An Instrument of Attendance.

— Appeared *A*, Attorney to the Effect after specified specially constitute, according to a Procuratory granted to him by *B*, of Date, &c. and went with us [*Mention the particular Place expressed in the Instrument of Requisition.*] and there, after reading and publishing, &c. [*Narrate the Contract of Wadset or heritable Bond, and make special mention of the Clause of Requisition.*] In the same manner, after reading and publishing the before mentioned Procuratory, empowering the said *A* to make the Requisition, and perform the rest of the Order under written: And again, after reading and publishing an Instrument of Requisition under the Hand of *D* Notary-publick, representing, That the same *A*, pursuant to the above said Procuratory, had on the — Day of — by-past, forewarned and required the said *C*, to attend at the Time of the Date of this Instrument,

at the Place of Redemption already specified, there to make payment to the above *B*, or to his Attorney in his Name, of the aforesaid principal Sum of —, the bygone Annualrents of that Sum, and the termly Penalties incurred through the untimely Payment of these Annualrents; and upon Delivery of the Money, to get up the fore-mentioned Security, the Charter and Sasine ensuing upon it, and an authentick Renunciation and Grant of Redemption of the Infeftment, to be kept and used by him and his Successors as their own proper Evidences in time coming: and also representing, That this *A* certified the above *C*, that in case of his Absence, or Refusal to pay the Money, he would protest that he had incurred the penal Sum of — mentioned in the Clause of Requisition before rehearsed, and that he might be liable in payment of it accordingly: And there, I say, after reading and publishing the particular Writings just now recited, in Presence of the Witnesses standing by, this same *A* shewed us an ample Renunciation and Grant of Redemption of the above mentioned Security, and declared, that upon Receipt of the Redemption-money, he was ready to give it up, with the Security itself, and the Charter and Sasine following thereupon; but in regard the above *C*, nor no Person in his Name, appeared in that behalf, though he was divers Times called upon at the most patent Door of the Place of Redemption before described, the said *A* therefore, having awaited there till Sun-set, did then, according to the Direction of the above
said

said Procuratory, protest, that as the same *C* had incurred the penal Sum of — stipulated in the Clause of Requisition already mentioned, he might be liable in payment of it accordingly; and that he might also be liable for the Damage and Expence the above *B* may happen to sustain on account of his Failure in that Respect. Besides, he protested, that the Diligence, personal or real, seconding the Requisition, might in nowise weaken or invalidate the heritable Security above written, but that the same Security, nevertheless, might continue to have its utmost Effect, till the whole Sums above specified were thoroughly satisfied. And hereupon he required Instruments, &c. These things were done, &c.

The Debtor thus withstanding the Requisition, by retaining the Money after the Creditor hath notified his Intention to him to have it returned, his Person may be attacked by Horning and Caption, his Moveables carried off by Arrestment and Forthcoming, the free Disposal of his Heritage barred by Inhibition, or the Heritage itself evicted by Adjudication, at the Creditor's Discretion.

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OBSERVATIONS

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Some Points of LAW.

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The Judicial Law of MOSES.

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